

PRACTICE IN CRIMINAL CASES

IN

CERTIORARI, HABEAS CORPUS, APPEALS,

AND PROCEEDINGS BEFORE

MAGISTRATES AND JUSTICES OF THE PEACE.

WITH FORMS.

AND

AN ALPHABETICAL SYNOPSIS OF OFFENCES, WITH FORMS OF CHARGES, ETC.

BY

CHARLES SEAGER,

OF OSGOODE HALL BARRISTER-AT-LAW, A POLICE MAGISTRATE, ETC.

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ERRATA AND ADDENDA.

Errors in citations of case have been corrected in the Table of Cases.

Page 24. On the subject of Amendment of Convictions by the Court, and

Page 30. On the subject of Justice returning Amended Convictions: add R. v. Flynn, 20 O.R. 638; R. v. McCay, 23 O.R. 442; The Queen v. Whiffin, 4 Can. Cr. Cas. 141.

Page 71. As to whom recognizance on appeal is to be given: The Queen v. Joseph, 4 Can. Cr. Cas. 126; The Queen v. King, 4 Can. Cr. Cas. 128.

Page 71. On the subject of Right to Jury on Appeal: add The Queen v. Malloy, 4 Can. Cr. Cas. 116, per McDougall, Co. J.

Page 145. On the subject of the Justice as a Witness: see Ex p. Hebert (S.C.N.B.), 4 Can. Cr. Cas. 153.

Page 354. Insert "Disorderly House" before "Code 198"; and add at page 355 on the same subject, R. v. Rice, L.R. 1 C.C.R. 21, and notes in 4 Can. Cr. Cas. p. 216.



PRACTICE

IN

MAGISTRATES'

CRIMINAL CASES.

CHAPTER I

CERTIORARI, AND MOTIONS TO QUASH CONVICTIONS.

Certiorari is a writ issued from a superior court to an inferior tribunal exercising summary judicial jurisdiction, by which such tribunal is required to return and transmit its judicial proceedings to the superior court, in order that the latter may review the same by virtue of its prerogative authority.

If any proceeding by a magistrate or justice is in excess of his jurisdiction, or is for any reason invalid, the superior courts of criminal jurisdiction of the different provinces will, in the exercise of their inherent authority, cause such proceedings to be brought up by certiorari for inspection, and to be either amended or quashed.

The expression "superior courts of criminal jurisdiction" is defined, and the courts in the different provinces indicated by s. 3 (y), in the Criminal Code Amendment Act, 1900.

Certiorari only lies to inferior tribunals, exercising judicial and not merely ministerial functions: R. v. Sh. man (1898), 1 Q.B. 578; R. v. Manchester (Jus.), (1899) 1 Q.B. 571; R. v. New Glasgow, 30 N.S.R. 107; 1 Can. Cr. Cas. 22; R. v. Cotham (1898), 1 Q.B. 802; and not to bodies exercising legislative functions, such as a town council passing an illegal resolution, or one beyond its powers: R. v. New Glasgow, supra; R. v. Aberdare Canal Co., 14 A. & E. N.S. 853.

The superior courts of criminal jurisdiction in the provinces at authorized to make rules regulating the prac-

tice and procedure in criminal matters, including certiorari. mandamus, habeas corpus, prohibition, and cases stated under Code 900: Cr. Code, sa. 533 and 3 (y); see R. v. Creelman, 25 N.S.R. 404; 52 Vict., c. 40 (C.).

By the Criminal Code Amendment Act, 1900, a sub-section (3) is added to s. 533, vesting that power, as to Ontario, in "The Supreme Court of Judicature" for Ontario.

No rules have been yet passed in Ontario under the above mentioned authority; but see infine under heading " Recogniz-The rules of court made under statutes of the provincial legislatures do not apply to criminal proceedings for offences against Dominion Statutes; and the provincial legislatures have, since Confederation, no authority to deal with procedure in criminal cases under Dominion laws: Re Boucher, 4 A.R. at p. 193; R. v. McAuley, 14 O.R. at p. 657; R. v. Beemer, 15 O.R. 266, 270; R. v. Beale, 11 Man. R. 448; R. v. Crothers, 11 Man. R. 567; R. v. Toland, 22 O.R. 505; R. v. Levinger, 22 O.R. 690; R. v. Wason, 17 A.R. 221. The Ontario Judicature Act and the Consolidated Rules under it, do not apply to any proceeding for an offence against Dominion laws: R. v. McAulay, 14 O.R. 643; R. v. Eli, 13 A.P. 526, Co., Jule 3 (Ont.); R.S.O. c. 51, s. 191; nor against Ontario statutes: R. v. Cushing, 26 A.R. 248.

By Code 754 the practice and procedure in all criminal cases in the High Court of Justice for Ontario, when not otherwise provided for by the Criminal Code, is the same as that which prevailed before the passing of the Criminal

Code.

As to quasi-criminal proceedings, see R. v. Dapas, 12 Man.

R. 653.

By 13 Geo. II., c. 18 (Imp.) s. 5, six clear days' notice of application for certiorari must be given to the justice, or to two of the justices if more than one sat on the case. This section of the Act is in force in Ontario: R. v. Peterman, 23 U.C.R. 516; R. v. Munro, 24 U.C.R. 44; R. v. McAllan, 45 U.C.R. 402; also in British Columbia: Re Plunkett, 3 B.C.R. 484. It is also in force in Manitoba and the North-West Territories: but in R. v. Porter, 20 N.S.R. 352, it was held not to be in force in Nova Scotia.

Section 5 is given in full in 1 Can. Cr. Cas. 367.

This notice should specify the objections to the conviction: see 13 Geo. II., c. 18, s. 5; also, R.S.B.C. c. 42, s. 2. But it would seem the notice is good without stating the objections: Re Taylor v. Davey, 1 P.R. 346.

FORM OF SIX DAYS' NOTICE TO MAGISTRATE.

In the High Court of Justice.

The King against A.B.

To C.D., Esquire,

Police Magistrate (or one of His Majesty's Justices of the Peace) for the

Whereas you did on the day of A.D. 19, at the of , in the County of , convict A.B. for that he did on the day of A.D. 19, at the of , in the said county of unlawfully (here not out the charge as in the conviction).

And whereas the said conviction is invalid in that it does not shew that the said alleged offence was committed within the territorial jurisdiction of you, the said ('.D., as such Police Magistrate (or Justice), or that the penalty imposed is illegal and in excess of your jurisdiction, or of the penalty authorized by law for the said offence; (or as the case may be, inserting the rarious grounds of objection.)

Wherefore the said A.B., being resolved to seek a remedy for the injury he has received and sustained by reason of the said conviction. I do hereby on behalf of the said A.B. give you notice that a motion will be made on behalf of the said A.B. before the presiding judge of the High Court of Justice in Chambers at Osgoode Hall, Toronto, after the expiration of six clear days from the time of your being served with this notice, namely on the day of , A.D. 19, at ten o'clock in the forenoon, or so soon thereafter as the motion can be heard, for an order for a writ of certiorari to issue out of the High Court of Justice to be directed to you and to the Clerk of the Peace for the County of , for the removal of such convection into the said court for the purpose of having the same quashed and the said A.b. discharged upon the grounds hereinbefore stated.

Dated at this day of

, A.D. 19

E. F.

of No. Street, in the County of solicitor for the said A.B.

A notice that the writ is to be directed to the justice alone after he has sent the proceedings to some other officer is not sufficient: R. v. Starkey, 6 Man. R. 588; 7 Man. R. 43.

The notice must be served on the Justice or Magistrate to whom it is directed six clear days before the application for certiorari: 32 Geo. II., c. 18, s. 1.

The notice should also be served on the prosecutor, if costs are to be asked against him; and such service may be made on his solicitor: see R. v. Ferguson, 26 N.S.R. 154.

FORM OF AFFIDAVIT OF SERVICE.

In the High Court of Justice.

The King v. A.B.

I, of the of , in the County of (fill in

1. That I did on the day of A.D. 19, personally serve C.D., the Police Magistrate (or, Justice of the Peace) named in the

notice now shewn to me marked Exhibit A, with a true copy of the said notice, by delivering to and leaving with him, the said C.D. personally. , on the said day a true in the County of of

copy of the said notice.

2. That I was present at the trial and conviction of the said A.B. for the offence mentioned in the said notice, and I personally know the person so served by me as aforesaid to be the said C.D., Police Magistrate (or, Justice) by whom the said conviction was made (or as the case may be, shewing the means of identification of the Magistrate or Justice). Sworn, etc.

The service of the notice is the first step to be taken; and it is unnecessary that the affidavits to be used on the application should be sworn or filed before giving it: R. v. S arkey, 6 Man. R. 588. The notice must be given although the conviction has been affirmed on appeal to the Sessions, and the justices of the Sessions must also be served in that case: R. v. Ellis, 25 U.C.R. 324; R. v. Peterman, 23 U.C.R. 516; see R. v. McAnn, 4 B.C.R. 587. The notice is a condition precedent to the application, and the court has no jurisdiction to grant certiorari unless it has been given: R. v. McAllan, 45 U.C.R. 402, and it was held that service on the justice of a rule nisi for certiorari returnable six clear days or more after service was not a good substitute for the notice: Re Plunkett, 3 B.C.R. 484; 1 Can. Cr. Cas. 365: R. v. McAllan, supra.

A notice given of a previous unsuccessful application does not enure to the benefit of the defendant on a second appli-

cation, but a fresh notice must be given: ib.

Application for Certiorari.—By 13 Geo. II., c. 18, s. 5, the certiorari must be applied for within six calendar months

after the conviction: see also R.S.B.C. c. 43, s. 1.

Great delay has been held, in New Brunswick and Nova Scotia (where the Imperial Statute is not in force), to be a ground for refusal of the application: Ex p. Kyle, 32 N.B.R. 212; unless the delay is accounted for: Ex p. Long, 27 N.B.R. 495; see also R. v. Nichols, 24 N.S.R. 151.

Affidavits for Certiorari. The application must be supported by affidavits shewing the grounds of it: see Can. Cr. Cas. 156.

The affidavits must be entitled in the Court: Ex parte Nohro, 1 B. & C. 267; and need not be otherwise entitled; but

are unobjectionable if headed "In the matter," etc.

A copy of the proceedings must be produced and verified by affidavit: or the affidavit must shew positively that a copy could not be obtained, and must disclose what the proceedings were; otherwise the application will be refused: Ex parte Emerson (N.B.), 1 Cap. Or. Cas. 156, and notes thereto; 33 N.B.R. 425; see R. v. Wells, 28 N.S.R. 547. The affidavits for certiorari or habeas corpus cannot be sworn before the prosecutor or his solicitor: R. v. Marsh, 25 N.B.R. 370. The statutory requirements must be strictly complied with, and where a local statute required that on the application for certiorari to remove a conviction under a provincial law an affidavit of the defendant should be filed, the want of such affidavit was held fatal to the application, when the matter was within the justice's jurisdiction: R. v. Stevens, 31 N.S.R. 125; R. v. Bigelow, 31 N.S.R. 436 and cases cited.

AFFIDAVITS FOR CERTIORARI.

Verifying proceedings.

In the High Court of Justice. The King v. A.B.

I , of the of (occupation), make oath and say:

1. That the hereto annexed several paper writings, marked respectively exhibits A., B. and C., to this my affidavit, were copied by me from the originals of which the same purport to be copies now in the hands of , Esquire, Police Magistrate (or Justice of the Peace, etc., or now on file in the office of the Clerk of the Peace for the County of

) and the said annexed paper writings are true copies of the said originals respectively.

2. That I have examined the warrant of commitment now in the hands of the Keeper of the common gaol for the county of (or as the case may be), upon which the said A.B. is now held in custody in the said gaol (or us the case may be).

3. That the paper writing hereto annexed, marked exhibit D., to this my affidavit, is a true copy of the said warrant of commitment now in the hands of the said Keeper of the said gaol (or as the case may be), upon which the said A.B. therein named is held for trial (or is committed under the said conviction).

4. I have carefully compared the said copy of the said warrant of commitment, marked D., with the said original thereof in the hands of the said Keeper, and the said copy is a true copy of the said original warrant of commitment.

Sworn, etc.

If copies of the proceedings before the justice cannot be procured, it should be stated in clear and positive terms what efforts have been made to procure them and the reason why they cannot be obtained, setting out what the proceedings were as fully as possible.

AFFIDAVIT BY DEFENDANT.

Same heading as above.

I, A.B., of, etc.

I am the above named defendant, A.B.

2. (State the facts shewing why the conviction or commitment and warrant are bad and forming the grounds for the application to quash).

Application-To Whom Made.-The application for certiorari is made in Ontario, to a judge of the High Court in Chambers; in Manitoba it must be made to the full Court and by Rule Nisi: R. v. Beale, 11 Man. R. 448.

ORDER FOR CERTIORARI.

In the High Court of Justice.

Tuesday, the The Honourable The Chief Justice , A.D. 19 . day of or The Honourable Mr. Justice In Chambers.

The King against A.B.

1. Upon the application of the said A.B. upon reading the six days' notice served herein, and the affidavit of service thereof, upon

, Esquire, the Police Magistrate (or Justice of the Peace) therein named, and upon reading the affidavit of the exhibits therein referred to, and the other papers filed on behalf of the said A.B. upon this motion, and upon hearing what was alleged by the solicitor (or counsel) for the said A.B. and for the prosecutor E.F., and also for the convicting or committing Magistrate (as the case may be).

2. It is ordered that a writ of certiorari do issue out of this Court directed to C.D., Esq., Police Magistrate (or one of His Majesty's Clerk of the Peace for the County of remove and return in the County of , Esquire, the (as the case may be), to remove and return into this Court all and singular the information, process, depositions, evidence, minute of adjudication, conviction and all other proceedings, and all things touching the same, had and taken against the said A.B. before the said Magistrate (or Justice of the Peace), , for that the said A.B., at the upon the information of , A.D. , on the , in the County of of , did unlawfully (here set out the charge). 19

Clerk in Chambers.

Recognizance.—By Code s. 892 the Court is authorized to make a rule requiring the defendant to enter into a recognizance or to deposit money as security, as a condition precedent to a motion to quash a conviction or any proceeding brought up on certiorari. No such rule has been made in Ontario since the Criminal Code was passed, but under the Dominion Statute, 49 Vict., c. 49 (now R.S.C. c. 178, s. 90), which on the passing of the Criminal Code was re-enacted as s. 892, the High Court passed a general order on 17th November, 1886, as follows:-

"No motion shall be entertained by this Court or by any Division of the same, or by any Judge of a Division sitting for the Court, or in Chambers, to quash a conviction, order or other proceeding, which has been made by or before a Justice of the Peace (as defined by the said Act), and brought before the Court by a certiorari, unless the defendant is shewn to have entered into a recognizance with one or more sureties in the sum of \$100 before a Justice or Justices of the County or place within which such conviction or order has been made, or before a Judge of the County Court of the said County, or before the Judge of a Superior Court, and which recognizance with an affidavit of the due execution thereof shall be filed with the Registrar of the Court in which such motion is made, or is pending, or unless the defendant is shewn to have made a deposit of the like sum of \$100 with the Registrar of the Court in which such motion is made, with or upon the condition that he will prosecute such certiorari at his own cost and charges, and without any wilful or affected delay. and that he will pay the person in whose favour the conviction, order or other proceeding is affirmed, his full costs and charges to be taxed according to the course of the Court, in case the conviction, order or proceeding is affirmed.'

This rule remains in force under the Criminal Code without being re-passed: R.S.C. c. 1, s. 7 (50); R. v. Robinet, 16 P.R. 49; and a similar rule was adopted by the Supreme Court of British Columbia, 27th April, 1889; see R. v. Ah Gin, 2 B.C.R. 207; and so in Nova Scotia: see McIsaac v. McNeil, 28 N.S.R. 442. And there is a similar rule in the N.W.T., dated 8th June, 1889, but requiring a recognizance

in \$300, or \$200 deposit.

FORM OF RECOGNIZANCE.

In the High Court of Justice.

The King v. A.B.

Be it remembered that on the day of year of the reign of our Sovereign Lord, Edward VII., of the United Kingdom of Great Britain and Ireland, King, Defender of the Faith, personally came before me, E.F., one of His Majesty's Justices of the Pasce in and for the County of (or Police Magistrate in and , in said County of in the County of for the of), A.B. (defendant), of the of , (occupation), G.H., of the of , in the County of , (occupation), and K.L. of the of , in the County of , (occupation), and acknowledged themselves to owe to our Sovereign the King the sum of \$100 of lawful money of Canada to be levied upon their goods, chattels, lands and tenements to His Majesty's use, upon condition that if the

aforesaid A.B. (defendant) shall prosecute with effect without any wilful or affected delay at his own proper costs and charges, a writ of certiorari issued out of the High Court of Justice for Ontario to remove into the said court all and singular the records of conviction and of whatsoever trespasses and contempts against the form of the statute known as the Criminal Code of Canada, s. (or insert whatever the Statute may be, under which the defendant was convicted), and particularly the offence whereof the said A.B. was convicted before C.D., Esquire, Police Magistrate (or one of His Majesty's Justices of the Peace) in and for the

, as aforesaid (set out the charge), and shall pay as and when the same may be ordered by the Court to the person or persons in whose favour the said conviction may be affirmed, all his or their full costs and charges to be taxed according to the course of the said Court in case the

said conviction is affirmed.

Then this recognizance to be void; otherwise to remain in full force and virtue.

Taken and acknowledged the day and year A.B. (seal).

first above mentioned at the of aforesnid, before me.

R.S. (seal).

A Justice of the Peace in and for the County of

Witness to the execution by the parties and Justice above named.

M.N.

This recognizance may be taken before a Justice of the Peace or Magistrate, or before a Judge for the County or place within which the conviction has been made, pursuant to the rule above mentioned, or before a Judge of the Superior Court.

One surety is sufficient if he can qualify in the amount mentioned.

This recognizance may now be enforced in the manner prescribed by Code 893.

In analogy to the general practice in the High Court, the sureties must, in Ontario cases, justify in \$100 over and above what they are otherwise sureties for (negativing the fact that they are sureties in any other matter, if such be the case or as the case may be), and also over and above their other liabilities: R. v. Robinet, 16 P.R. 49; but see R. v. Ashcroft (N.W.T.), 2 Can. Cr. Cas. 385, in which it was held that in the N.W.T. it is not necessary to negative the sureties being security in any other matter.

The security or deposit must be given before the motion to quash the conviction is made and cannot be put in pending such motion; but it is not required before certiorari is applied for. It may be delivered to the justice and filed with his return to certiorari: R. v. Cluff, 46 U.C.R. 565, in which case the practice and procedure are fully stated: see, also, R. v. Robinet, 16 P.R. 49; R. v. Ashcroft, 2 Can. Cr. Cas. 385.

The recognizance or deposit is only required in the case

of a motion to quash a conviction or proceeding "brought before the court by certiorari:" Code 892; so that, if the conviction or proceeding is already before the court, if regularly brought there (but not otherwise): R. v. McAllan. 45 U.C.R. 402; as, for instance, on a former motion for habeas corpus, no certiorari is necessary in aid of the motion to quash the conviction. And in such case no recognizance or deposit is required: R. v. Wehlan, 45 U.C.R. 396, R. v. Levecque, 30 U.C.R. 509, distinguished; R. v. Nunn, 10 P.R. 395; R. v. Ashcroft, 2 Can. Cr. Cas. 385; and in the North-West Territories when the conviction has been filed, under Code 80 i or 888, in the Supreme Court, a motion to quash it may be made without certiorari, and so the notice under 13 Geo. II., and the recognizance, are not requisite: Re Monaghan (N.W.T.), 2 Can. Cr. Cas. 488.

An affidavit of justification by the surety or sureties is necessary: R. v. Richardson, 17 O.R. 129; R. v. Petrie, N.W.T.R. vol. 1, pt. 2, p. 3. The rule nisi to quash the conviction was quashed in these cases for want of a sufficient recognizance or deposit; but fresh security having been put in pending the proceedings, leave was given to issue another rule nisi. In R. v. Abergele, 5 A. & E. 795, an adjournment was made to perfect the security; see also R. v. McAilan, 45 U.C.R. 402.

In the following case, however, it was held that the requirements of the rule as to filing affidavits of justification are imperative, and where they are not complied with the judge is bound to give effect to the objection and dismiss the application; and that leave to file the affidavit pending the motion to quash cannot be granted: McIsaac v. McNeil, 28 N.S.R. 424.

FORM OF AFFIDAVIT OF JUSTIFICATION BY SURETY.

In the High Court of Justice. The King v. A.B.

I, E. F., of the of (occupation) make oath and say:

in the County of

- 1. That I am the surety (ar one of the sureties, as the case may be) proposed and named for the above named A.B. in the recognizance in this matter hereunto annexed.
 - 2. That I am a freeholder (or householder) residing at No. St. in of in the said County of
- 3. That I am worth property to the amount of one nendred dollars over and above what will pay all my debts and liabilities and every other sum for which I am now liable, or for which I am bail, or surety in any other matter.

4. That I am not bail or surety for any person except in this matter and except (stating in what matter and for how much if any).

5. That my said property to the amount of the said sum of \$100 consists of household furniture (or farm stock, implements, money deposited in bank or bank stock or land, (describing it, or whatever it consists of), to the value of about

Sworn before me at the

E. F.

County of in the on the day of A.D. 19

Signed: O. P.,
A Commissioner, etc.

If there are two sureties, a second affidavit similar to the foregoing will be made, and in that case each may justify in \$50, so as to make up the \$100 required.

It has not been decided whether there must be a description or statement of the property on which the surety qualifies, but it is submitted that it is not required: see Tidd's Prac. 242 267; Short and Melton, 662. The Crown may question the sufficiency of the sureties by affidavits in answer, though there is no right to cross-examine the surety on this point.

FORM OF AFFIDAVIT OF EXECUTION.

In the High Court of Justice. The King v. A.B.

I, M. N., of the of in the County of (occupation) make oath and say:

1. That I was personally present and did see the hereunto annexed recognizance duly signed, sealed and executed by A. B., and E. F. and G. H., the parties thereto, and by R. S., the Justice of the Peace for the said County of , before whom the same was taken and acknowledged.

2. That the said recognizance was so executed, taken and acknowledged at the of in the said County of

3. That I know the said parties and the said Justice.

4. That I am a subscribing witness.

Sworn before me at the of in the County of this day of A.D. 19 .

T. U.,

A Commissioner, etc.

The Rule of Court, (see ante page 7) requires "an affidavit of the execution" of the recognizance, and the Court will not entertain an application to quash a conviction without such affidavit: R. v. Ah Gin, 2 B.C.R. 207.

Writ of Certiorari.—If the conviction has been returned to the clerk of the peace, under Code 801 or 888, the writ of certiorari need only be directed to the latter; it is properly addressed to the officer having the custody of the papers: R. v. Frawley, 45 U.C.R. at p. 231; and where there has been an appeal to the County Judge, and the papers are in his hands, it seems that the writ should be directed to him also: R. v. McAnn, 4 B.C.R. 587.

The writ is issued on *precipe* by the Registrar of the High Court on production of the order therefor.

The question of the validity of the conviction or commitment is sometimes argued on the application for certiorari, and if the proceedings are held to be valid certiorari will be refused. This was done in R. v. Cunerty, 2 Can. Cr. Cas. 325.

FORM OF RETURN TO A WRIT OF CERTIORARI.

Endorse on the back of the writ as follows: "The answer of C.D., the Justice of the Peace within mentioned.

The execution of this writ appears in the Schedule hereunto annexed.

Justice of the Peace.

SCHEDULE.

I, C.D., one of the Justices of the Peace of our Sovereign Lord, the King, assigned to keep the peace within the said County of and to hear and determine divers offences committed in the said county, by virtue of this writ of certiorari to me delivered, do hereby certify unto His Majesty in His High Court of Justice for the Province of Ontario, the record of conviction with the information, summons (or warrant to apprehend) and the depositions and evidence and minute of adjudication and all proceedings taken before me, of which mention is made in the said writ.

In witness whereof I the said C.D. have to these presents set my seal. Given at the $$\rm of$$ the day of A.D. 19 .

J.P. [Seal].

The conviction and other papers are to be annexed, with the above schedule, to the writ of certiorari and returned along with it and the recognizance above mentioned, to the Registrar of the High Court of Justice, Osgoode Hall, Toronto.

If the conviction has been returned by the justice to the Clerk of the Peace, the above return will be made by the latter.

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Upon being served with the writ of certiorari the justice of the peace or magistrate must make a return to the writ, even if the papers have been filed with the clerk of the

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peace, in which case the following form of return may be used:-

The answer of , the Justice of the Peace (or Police Magistrate) within mentioned.

The execution of this writ appears in the schedule hereunto annexed.

Justice of the Peace
(or Police Magistrate).

SCHEDULE.

I, Justice of the Peace (or Police Magistrate), to Our Sovereign The King, do certify that before the coming of the writ of Our said Lord the King, to me directed and to this schedule annexed, to wit, on the day of , A.D. 19, an information was laid on onthey against A.B. charging him with (state the charge), and the said charge was laid before me as such Justice (or Police Magistrate), and the matter of the complaint was enquired into by me, and the depositions of witnesses were taken.

The Crown was represented by , Esquire (County Crown Attorney, or as the case may be), and the prisoner by his counsel,

, Esquire (or as the case may be).

At the close of the examination, and upon hearing counsel for the Crown and counsel for the prisoner (or as the case may be). I did duly convict the said A.B. and prepare and sign a record of conviction of the said A.B. (or I did by warrant in due form of law) commit the said A.B. to the common gaol of the County of the receipt of the said and the common gaol of the County of the county of the case may be, describing the proceedings taken). The said warrant was sent to the gaoler with the said prisoner (if such be the fact), and the information and depositions were afterwards and before the receipt of the said writ by me sent and delivered to the Clerk of the Pence of the said County of according to law, and at the time of the receipt of the said writ by me, I had not, nor have I now, any of the said information, depositions, evidence, commitment or proceedings aforesaid remaining

in my custody, control or keeping whatsoever.

And this is my return to the said writ this day of

[Seal]
Justice of the Peace
(or Police Magistrate).

, A.D.

Motion to quash.—The motion to quash a conviction or commitment brought up under certiorari must be made to the full court; R. v. McAulay, 14 O.R. p. 656; R. v. Beemer, 15 O.R. 266; R. v. Beale, 11 Man. R. 448; R. v. Smith, N.W.T.R. vol. 1, pt. 2, p. 1. The motion for Rule Nisi should be set down with the registrar of the High Court the day before the application is to be made, and the following motion paper is to be filed:

MOTION PAPER ON APPLICATION FOR RULE NISI.

In the High Court of Justice.

Before the Court A.D. 19 .

The King against A.B.

Motion on behalf of the above named A.B. upon reading the writ of

certiorari granted herein on the day of A.D. 19 and the papers filed ir Chambers on the application therefor, the return to the said writ and the papers thereto attached, and the recognizance also filed for an order colling upon C.D., Esquire, Justice of the Peace (or Police Magistrate), for the of and E.F. (the informant), upon notice to them of such order to be given to them respectively, to shew cause why the conviction of the said A.B., upon the information of the said E.F. for that he did (set out the charge as in the conviction), should not be quashed with costs upon the following, among other grounds: (State the grounds.)

Of Counsel for the said A.B.

RULE NISI TO QUASH A CONVICTION.

In the High Court of Justice, The Honourable Chief day, the Justice of A.D. 19 The Honourable Mr. Upon the application of the said A.B. Justice upon reading the writ of certiorari issued on The Honourable Mr. the day of A.D. 19 the papers filed in Chambers on the applica-tion therefor, the return of C.D., Esquire, The King v. A.B. Justice of the Peace (or Police Magistrate), or the Clerk of the Peace for the County of of (as the case may he), to the said writ and the papers thereto attached, and also the recognizance entered into by the said A.B., with a surety (or sureties) also filed, and upon hearing Counsel for the said

It is ordered that C.D., Esquire, Justice of the Peace (or Police Magistrate), for the of and E.F., the prosecutor, upon notice to them of this order, to be given to them respectively, shall, on the day of A.D. 19 , at o'clock, in the forenoon, or so soon thereafter as Counsel can be heard before this Court at Osgoode Hall, Toronto, shew cause why a certain conviction made by the said C.D., Justice of the Peace (or Police Magistrate), on the information of the said E.F., whereby the said A.B. was convicted for that (set out the charge as in the conviction), and which said conviction has been removed into this Court under certiorari should not be quashed with costs, on the following grounds, amongst others: (8e/ out the grounds.)

On motion of Mr.

, of Counsel for the said A.B.

By the Court.

Registrar.

The objection to the want of the six days' notice or other objection to the proceedings to quash a conviction may be raised by the prosecutor or magistrate by a substantive application to supersede the certiorari; but that course is not essential; and the objection may be raised on the return of the motion to quash the conviction. Defects of form or of a trifling nature may, however, not be allowed to be brought up on the motion to quash a conviction: and a substantive motion will be necessary, so as to give an opportunity for ordering an amendment, if proper, and upon proper terms.

But if the defect is a fundamental one, it is not too late to bring it up on the motion for rule absolute to quash the conviction: R. v. McAllan, support, distinguishing, R. v. Leveque, 3 U.C.R. 396.

The same rule applies to objection to the certiorari on the ground that the security required is defective or has not been properly given: R. v. Cluff, 46 U.C.R. 565, and see Re

Bishop Dyke, 20 N.S.R. 263; R. v. Porter, ib. 352.

Care must be taken, not to do anything which would be held to be a waiver of an objection, (for instance, of the objection of want of notice); and either a substantive motion should be made to supersede the certiorari, or the justice or prosecutor should cause notice to be served that he will take the objection of want of six days' previous notice, on the return of the motion to quash the conviction. Should he not do this he may, by acquiescence in the motion or by delay, (such as allowing an adjournment to be ordered without raising the objection), be held to have waived it: R. v. Whittaker, 24 O.R. 437; following R. v. Basingstoke, 19 L.J.M.C. 28; and distinguishing on this point R. v. McAllan, 45 U.C.R. 402. In the case of R. v. McAllan, it was stated that the six days' notice to the justice was a condition procedent and its want "a most substantial defect;" and that if the objection were only to the recognizance required by the High Court rule, it might be got over, as was done in R. v. Abergele, 5 A. & E. 795, by allowing a new recognizance to be given, and enlarging the application for that purpose; but the want of the notice could in no way be cured.

But in the more recent case of R. v. Whittaker, supra, it was distinctly held, (but without discussing the question as to its being a condition precedent under the statute), that it might

be waived.

Quere, whether the truth or falsity of a return to certiorari can be enquired into by a motion to quash it: R.

v. Nichols, 24 N.S.R. 151.

Under the provisions of the Crown Rules, Nova Scotia, 1889, a motion to rescind an order for certiorari must be made by way of appeal: R. v. Fraser, 22 N.S.R. 502.

FORM OF NOTICE THAT ON THE MOTION TO QUASH, AN OBJECTION WILL BE TAKEN TO THE CERTIFICARI.

In the High Court of Justice.

The King v. A.B.

Take notice that upon the motion to quash the conviction of you, the above named A.B., objection will be taken on behalf of C.D., the

prosecutor (or of , the convicting Magistrate or Justice), that the writ of certiorari herein and the return thereto are invalid on the ground that six clear days previous notice was not given to the said ecavicting Magistrate (or Justice, or two of the convicting Justices, as the case may be), of the application for the said certiorari or that the recognizance filed is insufficient, for the following reasons: (stating the objections or stating any other grounds on which it is contended that the certiorari is invalid).

Dated, etc.

To the said A.B.

E. F., Solicitor for the said C.D., prosecutor, (or G.H., the Magistrate or Justice above named).

If a substantive motion to supersede the certiorari is made, then instead of the next preceding notice the following forms may be used:—

APPIDAVIT IN SUPPORT OF MOTION TO SUPERSEDE CERTIONARI.

In the High Court of Justice.

The King v. A.B.

, of the of , in the County of , make oath and say

 That I am the prosecutor (or the Magistrate or Justice as the case may be) named in the writ of certiorari issued herein, a true copy of which is now shewn to me marked Exhibit A.

2. [If the objection is that the notice was served on the magistrate less than six clear days, state the facts clearly, and shew when it was served, and negativing service for six clear days as required by the 13 Geo. II. If no notice was served at all on the magistrate, state the fact. If the copy of notice served is claimed to be insufficient in form, the copy of notice should be verified and marked as an Exhibit. If the objection is to the sufficiency of the recognizance, or of the affidavit of execution, or justification, or in form or substance or manner of execution, state any facts necessary to shew this. If the objection is to the sufficiency of the sureties shew this, and state fully the means of knowledge of the deponents, and what the sureties' property, if any, is worth. If the application is made on the ground of delay in prosecuting the writ of certificari and in moving to quash, then set out the proceedings taken and the facts shewing that there has been laches and undue delay.]

NOTICE OF MOTION TO SUPERSEDE CERTIORARI.

In the High Court of Justice.

The King v. A.B.

Take notice that a motion will be made on behalf of E.F., the convicting Justice (or Magistrate), or on behalf of C.D., the prosecutor herein, before the presiding Judge of this Court in Chambers, at Osgoode Hall, in the city of Toronto, on the day of , A.D. 19, at ten o'clock in the forenoon, or so soon thereafter as the motion can be made for an c der superseding or quashing the writ of certiorari issued herein, and succeeding the order therefor, and for the return of the conviction and other proceedings and papers to the said convicting Justice (or Magistrate), or to the Clerk of the Peace for the County of , on the ground that no notice was given to the said magistrate.

on the ground that no notice was given to the said magistrate six clear days before the application for the said writ, as required by the statute in that behalf; or that the notice was insufficient in this that (setting out its defect); or that no recognizance was filed as required by the rule of Court; or that the recognizance is insufficient,

or was not duly entered into and executed, in this that out defects); or that the sureties named in the said recognizance were not possessed of sufficient property to justify as such, and were not worth \$100 over and above what they are otherwise sureties for, and over and above their other liabilities, (see Re Robinet, 16 P.R. 49); or for want of prosecution and delay in prosecuting the certiorari on the part of the said A.B., and for an order that the said defendant do pay to the said prosecutor (or convicting Magistrate or Justice) his cosis of, and incldental to the application for certiorari and this application; or for such further or other order as may seem meet.

And take notice that upon such application will be read the affidavit the Exhibits therein referred to and the orders,

proceedings and papers herein.

Dated this

day of

A.D. 19 .

Bolleitor for the said prosecutor (or convicting Magistrate or Justice).

To the said C.D. and E.F., his solicitor.

Service of Rule Nist .- The rule nisi to quash the conviction must be served four days before the day on which the application for the rule absolute is to be made.

Motion for rule .- The case must be set down with the registrar of the High Court for argument at least the day before the time fixed for the argument, in analogy to C.R. 364, and the motion paper signed by counsel should be filed with the registrar. (The motion paper will be similar in form to that filed on application for the rule nisi.)

The court will not hear a motion to quash a return to certiorari pending an appeal from the order granting certiorari: R. v. Hurlburt, 26 N.S.R. 123, 2 Can. Cr. Cas. 331.

> RULE ABSOLUTE QUASHING CONVICTION. In the High Court of Justice.

The Honourable Chief Justice The Honourable Mr. Justice The Honourable Mr. Justice

Monday, the day of A.D., 19

The King against A. B.

1. Upon the application of A. B. upon rending the rule nisi issued on the day of , A.D. 19 , and the affidavit of service thereof, the writ of certiorari, dated the day of , A.D. 19 , the return of the said writ and the papers thereto attached, and the recognizance filed, and upon hearing counsel for the prosecutor, E. F., and for the appellant, A. B., and for C. D., Esquire, justice of the peace (or police magistrate), (or no one appearing for the said E. F. or C.D., although duly notified).

2. It is ordered that the conviction of the said A. B. by C. D.,

Esquire, justice of the peace (or police magistrate) for the on information of the said E. F. for that (set out the charge) be and the same is hereby quashed (and if costs are ordered) with costs to be paid by the said to the said A. B.

3. And it is further ordered that the said A.B. be and he is hereby discharged from custody under the warrant of commitment issued upon the said conviction.

4. And it is further ordered that no such action as is provided for by the Revised Statutes of Canada, chapter 178, section 89, and by section 891 of the Criminal Code of Canada, and by the Revised Statutes of Ontario, chapter 88, section 11, shall be brought against the said C. D. and E. F., or either of them, or any person whomsoever.

On motion of Mr.

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of counsel for said A. B.

By the Court,

Registrar.

Costs.—The court has authority under its general powers to award costs to the successful party although there was no recognizance: R. v. Starkey, 7 Man.R. 262. But costs are not awarded against the prosecutor or justice, except on the ground of misconduct: R. v. Johnston, 38 U.C.R. 549; followed by R. v. Somers, 24 O.R. 244, see also R. v. Coutts, 5 O.R. 644; R. v. Hazen, 23 O.R. 387; R. v. Coulsen, 24 O.R. 246: R. v. Westlake, 21 O.R. 618; R. v. Banks (N.W.T.) 1 Can, Cr. Cas. 370; R. v. Little, 6 B.C.R. 21. In R. v. Langford, 15 O.R. 52, the court refused to award costs against the justice although he had acted improperly through gross ignorance, but not with an intentional violation of known laws. On appeal from an order for costs against the magistrate and informant, the court refused to interfere with the discretion of the judge in the matter, especially as the magistrate and prosecutor might have avoided liability for costs by not opposing the application: R. v. Smith, 31 N.S.R. 607.

The question of costs was discussed in the above cases, and also in R. v. Banks (N.W.T.), 1 Can. Cr. Cas. p. 372; R. v. McLeod, 1 Can. Cr. Cas. 10; R. v. Graham, 1 Can. Cr. Cas. 405.

But the costs may be recovered in a civil action, if no order barring such action is made: R. v. Somers, supra.

If the conviction is affirmed without amendment, the prosecutor is entitled to his costs of opposing the motion: Paley, 7th Ed. 379.

But when the process of o quash was justified when launched, and the coveres amended and affirmed, costs are not given against the condant: R. v. Highan, 7 E. &

B. 557; Re Plunkett, 3 B.C.R. 484; R. v. Little, 6 B.C.R. 321; R. v. McAnn, 3 Can. Cr. Cas. p. 120. The principle upon which the question of costs is dealt with is discussed in the case of R. v. Crandall, 27 O.R. 63; and see Re Rice, 20 N.S.R. 437; R. v. Roche, 32 O.R. 20.

An application by way of certiorari to set aside a conviction is not an appeal within the meaning of Code 897 and 898; and the proceedings, therein provided, for the recovery of the costs do not apply. Any costs should be ordered to be paid to the opposite party, and not to the clerk of the peace; and can only be recovered by estreating the recognizance under Code 892, or by process of the High Court: see R. v. Graham (Divl. Ct., Ont.), 1 Can. Cr. Cas. 405.

Notice of Application for Costs.—It was suggested in R. v. Westgate, 21 O.R. 621, that if, with the notice of application for certiorari, a notice was served stating that unless the prosecution was forthwith abandoned, the costs of further necessary proceedings to obtain relief would be asked, such notice would be a ground for asking costs, when the conviction is manifestly bad, and when it appears clearly unjust or unfair to put the defendant to such further costs.

FORM OF SUCH NOTICE.

(the informant). To in the county of of of the Take notice that hereto annexed and served on you herewith is a true copy of a notice served on C. D , Esquire, police magistrate (or one of His Majesty's justices of the peace) for the of of a motion for certiorari to issue out of the High Court of Justice, directed to the said magistrate (or justice), and to the clerk of the peace for the , for the removal into the said High Court of Justice of the record and conviction of A.B. upon the information of you, the , for that he did on the A.D. 19 day of Baid unlawfully (set out the in the county of at the And take notice that unless the said conviction, and the prosecution thereunder, be forthwith abandoned by you, and notice given by you to the said A. B., or to me as his solicitor, to that effect with your consent to the quashing of the proceedings, the said A. B. will apply to the court on the quashing of the said conviction for an order that you pay the costs of the further proceedings necessary in the premises.

Dated this day of A.D. 19 .

Solicitor for said A.B.

Proceedings on Refusal to Quash.—Upon an order being made refusing to quash the conviction, the registrar of the court is forthwith to return it with the order to the

justice, who is to proceed to enforce the conviction; and it is not necessary to issue a writ of procedendo: Code 895. But if the conviction is quashed, even on the ground that the summons was not duly served, the justice is functus officio, and cannot issue a fresh summons on the same information, and the papers should remain on file in the High Court, and as the justice can only proceed when procedendo would have been ordered, prohibition was ordered restraining him from proceeding: R. v. Zickrick, 11 Man. R. 450.

Death of Prosecutor.—The death of the prosecutor (who is also the informant) after conviction and before service of proceedings, does not prevent the High Court from dealing with the matter: R. v. Fitzgerald, 19 O.R. 203.

Jurisdiction and Powers of Court.—The clauses of the Criminal Code relating to the removal of cases to the High Court and the proceedings thereon and providing that certiorari is not to be granted in certain cases, do not apply to prosecutions under Ontario laws: R. v. Bethan (unreported).

But the prerogative of the Sovereign to review and keep within their jurisdiction the proceedings of inferior legal tribunals, and which prerogative is vested in and delegated to the High Court, is not dependent upon statutory provisions. It applies, therefore, to all convictions and proceedings by justices and magistrates acting under the authority of a Royal Commission, and whether executing the laws of the Dominion or of a Province: R. v. Cushing, 26 A.R. p. 248.

By the provisions of Code 808 none of the clauses in part 58 of the Criminal Code (ss. 839-909) apply in any way to convictions or orders made by magistrates under part 55 (ss. 872, etc.); but by Code 800, such convictions are not to be quashed for want of form; and a warrant of commitment by a magistrate is not to be held void for any defect whatever, if it is alleged therein that the defendant was convicted, and it appears that there is a valid conviction to sustain it. In such cases, if the conviction itself is also bad, a defective commitment is not cured by the statute: R. v. Gibson, 29 O.R. 660, and cannot be amended by the court, the sections as to amendment (Code 885 and 889) not applying to summary trials before magistrates: R. v. Randolph. 32 O.R. 212.

Upon certiorari and motion to quash a conviction, the Court cannot sit in appeal from the justice's or magistrate's decision, and, therefore, cannot quash an adjudication, otherwise valid, upon an objection that the justice erroneously found a matter either of fact or of law which he was competent to try: Colonial Bank v. Willan, L.R. 5 P.C. p. 443; R. v. Grainger, 46 U.C.R. 382; R. v. Green, 12 P.R. 373; R. v. Walsh, 29 N.S.R. 521; reversing R. v. McDonald, 19 N.S.R. 336; R. v. Stevens, 31 N.S.R. 124.

The court has no power to review the decision of the justice upon the evidence, in a matter within his jurisdiction, as that is a matter of appeal, and this is so even if an affirmative finding was essential to jurisdiction: R. v. Cunerty, 26 O.R. 51; 2 Can. Cr. Cas. 325; Ex p. Nugent, 1 Can. Cr. Cas. 126.

And the court refused to interfere by certiorari, when the magistrate was alleged to have made a conviction on the evidence of a witness precluded by statute, the proper remedy being by appeal: R. v. Walsh, 29 N.S.R. 521; followed in R. v. Stevens, 31 N.S.R. 124; or to review an erroneous ruling as to the admission of evidence: R. v. Geo. McDonald, 29 N.S.R. 33, citing R. v. Dunning, 14 O.R. 58; R. v. Brown, 16 O.R. 45; Ex p. Armstrong, 31 N.B.R. 411; Ex p. Hopwood, 15 Q.B. 121; Colonial Bank v. Willan, L.R. 5 P.C. p. 443.

But the refusal of the magistrate to allow the defendant to give evidence is a matter going to the jurisdiction: Ex p.

Legere, 27 N.B.R. 292.

The court will not interfere in a case in which the magistrate has jurisdiction over the subject matter; even if it would have come to a different conclusion upon the evidence: Ex p. Levesque, 32 N.B.R. 174; Ex p. McKeen, 32 N.B.R. 85.

In R. v. Bolton, 1 Q.B. p. 72, Denman, C.J., said that if the conviction is valid the court cannot go into the evidence at all to consider whether or not the justice's decision was supported by the evidence; that is for himself or the appellate court; and this is so, even if the evidence leads to the irresistible conclusion that the offence was not committed, and so, in one sense, was not within the justice's jurisdiction.

In Ex p. Partington, 6 Q.B. 656, the same eminent judge said: "We are not authorized to review his (the justice's) decision. It

may be that there may be no court competent to review it . . . It is clear only that we have not that power." See also the review of the numerous decisions to the same effect and the opinion of the Supreme Court on the same point, in Re Trepanier, 12 S.C.R. at p. 113.

In R. v. Wallace, 4 O.R. 127, a conviction had been made upon evidence which manifestly did not prove any offence, and in that case, Wilson, C. J., said that the provision for referring to the evidence made by 41 Vict., c. 16, s. 117, (the same as Code 889,) "would seem to warrant an examination of the merits; but it is probably only so when a conviction is substantially defective on its face, to allow it to be supported by the evidence proving the offence." In the same case, Hagarty, C. J., said: "If the justice refused to hear any evidence or decided without hearing evidence, or if there was a clear dereliction of duty or improper conduct on his part, the court would probably have authority to interfere, but not if there has been any decision of the justice arrived at by him, on the merits, however erroneous; and the court has to see that the justice 'acted within his authority, duly heard the case, and gave his decision upon the evidence as laid before him'." Cameron, C.J., in the same case said, that when the evidence is taken, but it does not shew any offence, the justice has no jurisdiction, and the court may issue certiorari to quash the conviction.

The above were not appealable cases.

In R. v. Coulson, (No. 1), 24 O.R. 246; 1 Can. Cr. Cas. 114, it was held by the judges of the Queen's Bench Division, following the above case of R. v. Wallace, 4 O.R. 127, that, if the conviction is valid on its face, the court cannot, on a motion to quash, look at the evidence to see whether an offence was established or not, as that was a matter for the justice and the appellate court, if any. But this was not followed in the subsequent case of R. v. Coulson (No. 2), 27 O.R. 59, before the judges of the Common Pleas Division, in which it was held that, even in an appealable case, and even if the conviction is apparently a valid one, the depositions should be looked at for the purpose of ascertaining whether there was any evidence which would have been sufficient to go to a jury; and if not, the conviction should be quashed, as being made without jurisdiction.

In R. v. St. Clair, 27 A.R. 311, (which was the case of a conviction by a magistrate under part 55 of the Criminal

Code and so there was no appeal upon the merits), Osler, J., said. "If there was evidence upon which the magistrate might have convicted, he was the judge of the weight to be attached to it, and it is not for us to re-hear the case or sit in appeal from it." And in R. v. Hughes, 29 O.R. 179, Boyd, C.J., said: "It may be that when a conviction is good on its face, and there is an appeal to the Sessions, the court, on certiorari, will not go into the facts; but it is a serious thing, and a doubtful thing, to say that the court will not do so, even although the conviction is good on its face, when there is no so that appeal."

The present result of the cases seems to be that in cases where there is no appeal, even if the conviction is valid on its face, the court will, without weighing the evidence, see that there is some evidence, such as would justify a case going to a jury, and upon which the conclusion of guilt may fairly be drawn; and in any case, a conviction not based upon any proper proof of guilt whatever, is void as against natural right, and in excess of jurisdiction, and will be quashed even if it is valid on its face. See White v. Feast, L. R. 7 Q. B. 353; R. v. Davey (Ont. App.), 4 Can. Cr. Cas. p. 33; Ex p. Lalley, 27 N.B.R. 129; Ex p. Coulson, 33 N.B.R. 341, 1 Can Cr. Cas. 31.

The granting of certiorari is discretionary in any case; and if it appears that the grounds of objection are more properly the subject of appeal and an appeal lies, the court will refuse certiorari unless special grounds are shewn: R. v. Whitbread, 2 Doug. 553; Ex p. Ross, 1 Can. Cr. Cas. 153; Ex p. Young, 32 N.B.R. 181. And after a conviction has been affirmed on appeal, certiorari will not be granted: Code 886; except for excess of jurisdiction: R. v. Lynch, 12 O.R. 372; R. v. Herrell (No. 2), 3 Can. Cr. Cas. 15; and in appealable cases certiorari will be refused, unless special circumstances are shewn therefor: Ex p. Ross (S.C.N.B.), 1 Can. Cr. Cas. 153.

The court, in its discretion, refused certiorari when defendant pleaded guilty, and there was an appeal: Ex p. Barbarie, 31 N.B.R. 368.

But in non-appealable cases the court will go into both facts and law: R. v. Hughes, 29 O.R. 179; 2 Can. Cr. Cas. 5.

If it appears from the evidence that the defendant was

guilty and properly convicted, the court will not quash the

conviction, however invalid it may be on its face: R. v. Menary, 19 O.R. 691.

But in such case, the court must be satisfied from the depositions that, if trying the defendant in the first instance, it would have convicted him: R. v. Herrell, I Can. Cr. Cas. 510.

If the conviction is invalid on its face, it is the duty of the court to examine the evidence; and if satisfied that an offence of the nature described has been committed, over which the justice had jurisdiction, and that the punishment is not in excess of the justice's jurisdiction, the conviction or warrant is not to be held invalid for any defect or insufficiency: Code 889.

And by the same section, even if the punishment is in excess of what may lawfully be awarded, the court shall have the like powers, to deal with the case as seems just, as are by Code 883 conferred in Ontario upon the General Sessions, and in the other Provinces upon the courts named on an appeal under Code 879.

By these sections, the court is given express power, on an application to quash a defective conviction, to refer to the evidence, and to modify or amend the conviction, or to make such other conviction as the court thinks just, and to deal with the case as the justice ought to have done: Code 883.

And this applies whether the punishment is in excess of the justice's jurisdiction or not: Code 889; R. v. Crandall, 27 O.R. 63; Ex p. Conway, 31 N.B.R. 405.

The powers conferred by Code 889 were acted upon by the court and approved on appeal in the recent case of R. v. Murdock, 4 Can. Cr. Cas. 82, and it was held in the same case that this might also be done on application for habeas corpus. There is a further provision made by Code 752, authorizing the court, on application for certiorari and habeas corpus, in cases of indictable offences, to make an order detaining the accused and directing the judge or justice, under whose warrant he is in custody, or any other judge or justice, to take further evidence, or such further proceedings as the court deems will best further the ends of justice. But this will only be done in exceptional cases: R. v. Randolph, 32 O.R. 212.

As already stated, sections 883 and 889 (Cr. Code) only apply to summary convictions, under Part 58, and in cases

under Part 55, relating to summary trials by magistrates, the court cannot amend: R. v. Randolph, supra; R. v. Gibson, 29 O.R. 660.

But where excessive imprisonment had been awarded in a conviction, in a case which the magistrate was competent to try, either as a magistrate, or as an ex officio justice, and there was nothing to preclude the court from assuming that he was trying it in the latter capacity, the court so assumed; and in view of the fact that the defendant had pleaded guilty, and that the ends of justice would be better served by amending the conviction, under Code 889, the court amended it, so as to impose the proper punishment: R. v. Spooner (not yet reported), 27 Dec., 1900, per Falconbridge, C.J. and Street, J. In this case the court ordered the defendant to be brought up on habeas corpus to receive the new sentence.

In Ex p. Nugent (S.C.N.B.), 1 Can. Cr. Cas. 126, the difficulty in amending a conviction, in which the quantum of punishment is in the justice's discretion, is discussed; and it was argued that the court would by such amendment make the justice appear to have exercised a discretion which he had not exercised, and would inflict a punishment which had not been inflicted by the justice; see also R. v. Lake, 7 P.R., p. 230.

But Code 889, as already stated, gives the widest powers and confers upon the court itself, on examining the evidence, the like powers to deal with the case (and even, if necessary, to make a new conviction) as are conferred by Code 883 upon the General Sessions on an appeal.

In the case of Ex p. Nugent, it was decided that when the penalty is a fixed sum, specified in the particular statute, and the justice has, in error, awarded an additional punishment, the court may amend on the assumption that it was manifest that the justice added the unauthorized punishment by inadvertence or through ignorance. And in that case the Supreme Court of New Brunswick ordered that the conviction, on being returned under the certiorari, should be amended by striking out the unauthorized clause.

Where the conviction did not shew that the offence was committed within the justice'. jurisdiction, it was held to be invalid: R. v. Chandler, 14 East, 267.

But the court may amend it in such case if the evidence shews that the case was in fact within the justice's jurisdiction: R. v. Elliot, 12 O.R. 524.

But when neither the conviction nor the evidence shewed that the place mentioned was within the justice's jurisdiction the conviction was quashed: R. v. Young, 5 O.R. 184a.

In a case of a similar defect, the evidence was looked at; and it appearing from the caption that the charge, as laid, was read to the defendant, the court referred to the charge stated in warrant to apprehend, which was returned with the certiorari; and the warrant shewing that the offence was one which arose within the justice's jurisdiction, the conviction was amended, the court being thereby satisfied, in accordance with Code 889, that an offence of the nature described in the conviction, and over which the justice had jurisdiction, had been committed: R. v. McGregor (Ont.), 2 Can. Cr. Cas. 410; 26 O.R. 115.

A conviction which is invalid as not negativing an exception in the statute, will be amended if the evidence negatives the exception: R. v. Smith, 31 O.R. 224.

Code 890 (as amended by the Act of 1900, c. 46), and Code 846, provide that none of the defects therein enumerated shall invalidate a conviction or other proceeding.

There are many other defects which are within the saving provision of Code 889. For instance, if the adjudication and conviction omit to fix the amount of costs payable or a provision for distress before imprisonment: R. v. Flynn, 20 O.R. 638; R. v. Clarke, 20 O.R. 642.

A manifestly clerical error will be amended: Ex. p. Kavanagh (S.C.N.B.), 2 Can. Cr. Cas. 267.

And, generally, a proceeding to quash a conviction or to discharge the defendant must be based upon some substantial defect in the justice or legality of the proceeding, and not a mere informality: R. v. Barker, 1 East, 186. The rules and provisions of the Criminal Code above cited apply also to warrants of commitment, and all other warrants to enforce convictions: Re Plunkett, 3 B.C.R. 384.

When Certiorari taken away.—By Code 896, if the defendant appeared before the justice, and the case was tried on its merits, and the defendant has not appealed in an appealable case, or if he appealed and the conviction was sustained, it is not afterwards to be vacated for defect of form, but the construction is to be such a fair and liberal one as is agreeable to justice.

Code 886 provides that no conviction or order, affirmed on appeal, shall be quashed for want of form, or removed by certiorari; and no warrant of commitment shall be held void by reason of any derect, provided it is therein alleged that the defendant was convicted, and there is a good and valid conviction to sustain it. And by Code 887 no certiorari is to be allowed to remove a conviction or order if the defendant appealed; nor is the order or conviction made on appeal to be so removed.

Giving notice of appeal is "appealing" within this section of the Code: R. v. Howard, 6 C.L.T. 526; R. v. Lynch, 12 O.R. p. 378.

But the giving of notice, and filing a recognizance for an appeal, does not take away the right to certiorari on the ground of excessive jurisdiction: R. v. Ashcroft, 2 Can. Cr. Cas. 385.

See also, R. v. Wallace, 1 East, P.C. 186; R. v. Johnston, 30 U.C.R. 423: R. v. Levecque, 30 U.C.R. 509; R. v. Scott, 10 P.R. 517; R. v. Starkey, 7 Man. R. 43.

The right to certiorari is also declared to be taken away by certain statutes in particular cases. It will, however, be held not to be taken away by implication, nor otherwise than by express words, and not by a statute authorizing an appeal to the Sessions which was empowered to "hear and finally determine" the matter: R. v. Jukes, 8 T.R. 542.

Nor by a statute which provides that no other court than the one appealed to should intermeddle, but that it should be finally determined by the Sessions only: R. v. Morley, 2 Burr. 1040.

Unless the word "certiorari" is used and barred, such statutes will be construed as only referring to matters of fact, tried by the justice: R. v. Plowright, 3 Mod. 95; 2 Hawkins, P.C. 6th ed., c. 27, s. 23; and see notes 1 Can. Cr. Cas. p. 155.

In pursuance of Code 887, the court will not order a conviction to be returned by certiorari for the purpose of review, or on ary ground, other than excess of jurisdiction, after an appeal under Code 879, et seq., or after any appeal authorized by law: R. v. Lynch, 12 O.R. 372; citing R. v. Wallace, 4 O.R. 127.

But whenever the right to certiorari is expressly taken away, whether by the clauses of the Cr. Code (such as clause

887), or by the particular statute relating to the offence, a party has, nevertheless, always the right to certiorari on the ground of want of jurisdiction of the justice to do what is complained of.

Certiorari is, as already mentioned, a prerogative right: R. v. Lynch, 12 O.R. p. 372; and it cannot be taken away by any legislation in any case in which the justice has acted without or in excess of jurisdiction; and the evidence may be looked at upon that question: Ex. p. Bradlaugh, 3 Q.B.D. 511; R. v. Dowling, 17 O.R. 698; see also Tupper v. Murphy, 3 R. & G. (Nova Scotia) 173; R. v. McKenzie, 23 N.S.R. 620; R. v. Major, 29 N.S.R. 373; R. v. Bigelow, 31 N.S.R. 436, and cases therein cited.

And the statute purporting to take away the right to certiorari will be construed as only doing so in so far as relates to the High Court reviewing the proceedings as to their regularity or validity, otherwise than upon the question of jurisdiction; and the authority of the High Court in the latter respect, cannot be taken away by statute: Re Holland, 37 U.C.R. 214.

"It is settled in cases where no restraint is placed by the legislature upon review by certiorari that an adjudication by a tribunal having jurisdiction over the subject matter is, if no defects appear on the face of it, to be taken as conclusive of the facts therein stated; and the court will not on certiorari quash an adjudication upon the ground that the fact, however essential, has been erroneously found. And even when the right (of certiorari) is taken away by statute, it is to be deemed as still existing in cases of want or excess of jurisdiction or fraud:" per King, J., The Queen v. "The Troop," 29 S.C.R. p. 673. Referring to Colonial Bank v. Willan, L.R. 5 P.C. 417 he adds: "There is a distinction between the merits of the case, and points collateral to the merits upon which the limit of jurisdiction depends. In the former, whenever by statute the adjudication is final, no mere error of the tribunal, whether as to law or fact involved can make the adjudication open to review on certiorari."

But as also decided in Re Holland, 37 U.C.R. 214, the adjudication may, notwithstanding, be removed to the High Court, not for review as to its regularity or validity, or the sufficiency of the evidence, if there is any evidence at all to support it, but on the sole question of jurisdiction. But the

conviction in such case will not be quashed except upon the ground of clear excess or want of jurisdiction, or upon the ground of fraud: Colonial Bank v. Willan, L.R. 5 P.C. 417.

An appeal is no obstacle to certiorari based upon an excess of jurisdiction: R. v. McAnn, 4 B.C.R 587, 3 Can. Cr. Cas. 110; R. v. Starkey, 6 Man. R. 588, 7 Man. R. 43; R. v. McKenzie, 23 N.S.R. 19.

The question of the powers of the court on application for certiorari, in cases where it has been taken away, is reviewed in R. v. Chantrel, L.R. 10 Q.B. p. 589.

When a question as to the validity of a conviction has been decided by the court, on a case stated, the matter is resjudicata, and certiorari will not be granted on the same ground: R. v. Monaghan (N.W.T.), 2 Can. Cr. Cas. 488.

A conviction for breach of a by-law was quashed when proof of the by-law required by the Ontario Evidence Act, as amended, had not been properly given: R. v. Dowslay, 19 O.R. 622.

Returning Amended Conviction.—If a certiorari is obtained upon a defective memorandum of adjudication, and before any formal conviction is made out, the justice is not precluded from making out and returning a formal conviction remedying the defect in the adjudication: R. v. Smith, 46 U.C.R. 442; R. v. Menary, 19 O.R. 691; Jones v. Williams, 36 L.T. 559; Paley, 6th ed. 271 and 424.

In his return to certiorari, the justice may make out and return an amended conviction, if the first one made out, and on which the certiorari was obtained, was defective: R. v. Hartley, 20 O.R. 481 'collowed by R. v. McAnn, 4 B.C.R. 587.

And such amended conviction may be made out and returned to the court under certiorari, even after a previous formal conviction has been returned to the clerk of the peace; provided such new conviction is according to the truth, and is supported by the facts of the case, as proved before the justice: R. v. Barker, 1 East, 186; Selwood v. Mount, 9 C. & P. 75; Wilson v. Graybiel, 5 U.C.R. 227; but see R. v. McKenzie, 23 N.S.R. 6; R. v. Learmont, ib. 24. And he may do so even after a writ of certiorari has been served: R. v. McKenzie, 6 O.R. 165; and after the first formal conviction has been returned to the court under it; and, in fact, at any time before the conviction has been actually quashed, or the defendant released: R. v. Lawrence, 43 U.C.R. p. 168; R. v.

Lake, 7 P.R. p. 235; R. v. Hartley, 20 O.R. 481; R. v. Bennett, 3 O.R. 45; Chaney v. Payne, 1 Q.B. 712; Charter v. Graeme, 13 Q.B. 216; R. v. House, 2 Man. R. 58; R. v. Smith, 46 U.C.R. 442; R. v. Richardson, 20 O.R. 514; Jones v. Williams, 36 L.T. 557; R. v. McDonald, 26 N.S.R. 404; R. v. Bigelow, 31 N.S.R. 436. So with regard to an invalid warrant of commitment. If a good warrant be returned, the court will not enquire into the validity of a previous document under which the defendant was committed: Paley, 6th ed. 348; Re Plunket, 1 Can. Cr. Cas. 365; 3 B.C.R. 484.

If there is a good conviction returned with a bad commitment, the court will adjourn the case to enable an amended commitment to be filed in conformity with the conviction: R v. Lavin, 12 P.R. 642.

But the justice cannot make out and return a conviction, or amended conviction, substantially differing from his memorandum of adjudication, giving effect to a change of intention, as regards the adjudication of guilt or punishment: R. v. McAnn, 3 Can. Cr. Cas. 110. A justice cannot convict a man of one offence, and on certiorari, inform the court that he convicted him of another: Re Houghton, 1 B.C.R. p. 89. Nor can he award punishment of one sort, and return a conviction awarding another.

But it is otherwise as regards the consequences, which follow the default of payment of the fine; and any error or excess in that respect may be remedied by making out a new conviction without amending the minute of adjudication: R. v. Menary, 19 O. R. p. 696; R. v. Hartley, 20 O. R. 481; R. v. McAnn, supra; R. v. Doherty, 32 N. S. R. 235. But see R. v. Perley, 25 N.B.R. 43.

When the justice has exercised his judgment in the case, and has nominated the fine and fixed the term of imprisonment, the formal conviction must be in accordance with the fact; and the fact is shewn by the minute of adjudication; and in order to change the latter there would have to be a new judgment, which could only be done in presence of the defendant, as suggested by Wilson, C. J., in R. v. Brady, 12 O.R. p. 363. But where the excess was in awarding measures in default of payment, (as where defendant was illegaly ordered to be committed to the stocks, Barton v. Breckwell, 13 Q.B. 393; or where distress was illegally ordered, R. v. Menary, 19 O.R. 691; and R. v. Hartley, 20 O.R. 481, followed on this point in R. v. Southwick, 21 O.R. p. 674; see also

R. v. Walsh, 2 O.R. 206), the conviction may be amended by making out a new one, omitting the excess, even after the formal conviction containing the defect has been returned and attacked upon certiorari: R. v. McAnn, 3 Can. Cr. Cas. 110; 4 B.C.R. 587.

The leading case of R. v. Hartley, 20 O.R. 481, was followed on the above point by R. v. Richardson, 20 O.R. 514, and over-ruled the decisions to the contrary on this point in R. v. Brady, 12 O.R. 358, and R. v. Higgins, 18 O.R. 148.

An alteration which would be more onerous to the defendant cannot be made in his absence, and can only be made by amending the adjudication in his presence: R. v. Brandon, 3 L.T. 559; and see Jones v. Williams, 36 L.T. 557.

A conviction which imposes less than the minimum punishment provided for the offence is not invalid: Code 890 (b), 889; nor one which omits to negative circumstances, the existence of which would make the act lawful whether stated in the section under which the offence is laid or under another section: Code 890 (c).

If the original adjudication imposing measures for enforcing the penalty has been acted upon (as where hard labour was added improperly to imprisonment in default of payment and the defendant has been imprisoned at hard labour under it) the defect cannot be corrected by an amended conviction omitting the improper provision; R. v. McAnn, 4 B.C.R. 587; 3 Can. Cr. Cas. p. 121; Barton v. Bricknell, 13 Q.B. 393.

A commitment imposing unauthorized conditions of discharge (such as a provision that the defendant be imprisoned until the costs of conveying him to gaol are paid, in cases where that is not provided for) and which has been acted on, is bad in whole and must be quashed: Ex p. Lou Kai Long, 1 Can. Cr. Cas. 120.

That part of an adjudication improperly awarding imprisonment, in default of a payment of a fine, may be quashed, without quashing the rest of the conviction: R. v. Dunning, 14 O.R. 52.

There is a distinction between making out a conviction containing more than the adjudication (and thus creating a variance between them), and one which omits something which was improperly included in the adjudication. The above-mentioned case of R. v. Hartley, decides that the con-

viction is good in the latter state of facts, while in the former it is not.

If the adjudication is erroneous, or the punishment awarded is not in accordance with law, the justice is not functus officio, even after he has made out and returned a formal conviction; but he may still bring the parties before him and amend the minute of adjudication in their hearing, and return a new conviction, even after certiorari has been issued: R. v. Hartley, supra; R. v. McAnn, 3 Can. Cr. Cas. p. 121, 4 B.C.R. 587; R. v. Dunning, 14 O.R. p. 58; R. v. Brady, 12 O.R. 363, per Wilson, C.J.

An unsealed conviction is bad and cannot be amended by the court; but an amended conviction with seals may be made out and filed before the first one is acted on: Bond v. Conmee, 16 A.R. 398; R. v. Phipps, 11 W.R. 730.

A conviction against a person by wrong name is not defective if objection was not taken before the justice, when he could have amended the proceedings: R. v. Corrigan, 2 Can. Cr. Cas. 591.

It me conviction is under a particular statute, which does not provide how the penalty is to be enforced, the adjudication and conviction are not defective for not providing for it; and Code 872 supplies the measures to be taken: R. v. McKenzie, 6 O.R. p. 168.

If other costs than those in the tariff are ordered, as where a conviction contained an order to pay costs, including \$1 which had been paid for the use of the hall where the trial was held, it is in excess of the justice's jurisdiction and the conviction is bad. The court has no power to amend by omitting that item, for that would create a variance between the adjudication and the conviction, coming within R. v. Walsh, 2 O.R. 206; and the court having no power to interfere with an adjudication the conviction will be quashed: R. v. Elliott, 12 O.R. 524; but see R. v. Murdock, 4 Can. Cr. Cas. 882, ante p. 23.

A judgment of the General Sessions cannot be removed by certiorari, it being a Court of Record, and the judgment being by a court of competent jurisdiction the matter is res adjudicata. But an order of General Sessions issued in excess of authority may, as a judicial act of an inferior tribunal, be so removed; for instance, an order directing the sheriff, under a judgment of the General Sessions, to abate a

nuisance, was removed by certiorari and quashed, the Sessions having no authority to substitute such order for the writ de nocumento amovendo which ought to have been issued: R. v. Grover, 23 O.R. 92.

As to removal by certiorari on proceedings on indictable offences, where there is reason to apprehend that the accused may not be fairly tried: see R. v. Hart, 45 U.C.R. 1; R. v. Adams, 8 P.R. 462.

Appeals.—An appeal lies to the High Court from an order for certiorari granted by a judge, but not from a judge in chambers to another judge in court: R. v. Graham, 1 Can. Cr. Cas. 405.

There is no appeal to the Court of Appeal from the High Court on an application for certiorari; nor from an order made on an application to quash a conviction under a Dominion law; nor is there any such appeal in cases under Ontario statutes, except upon a certificate of the Attorney-General for Ontario, that the decision involves a question of the construction of the B.N.A. Act: See R.S.O. c. 91, s. 3; and in a case where such certificate had been obtained, but it plainly appeared to the Court of Appeal that the decision did not in fact involve any such question, and that the certificate had been granted inadvertently, the court quashed the appeal: R. v. Reid, 26 A.R. 181.

An appeal was allowed by R.S.O. c. 245, s. 121, to the Court of Appeal, under the Ontario Liquor License Act: R. v. Hodge, 7 A.R. 246; but unless there is a special provision in the statute relating to the particular offence, for an appeal from the High Court to the Court of Appeal, no such appeal lies; either in cases under Dominion laws: R. v. Eli, 13 A.R. 526; R. v. McAuley, 14 O.R. 643; or under Ontario statutes, the Judicature Act and the rules under it, not applying in either case: R. v. Cushing, 26 A.R. 248; and there being no general provision for appeals to the Court of Appeal in penal matters. There is no appeal in any case except it is specially provided by statute: R. v. London (Jus.), 25 Q.B.D. p. 360; Ellis v. The Queen, 22 S.C.R. p. 11.

CHAPTER II.

HABEAS CORPUS.

THE writ of habeas is defined as "a writ directed to the person detaining another, commanding him to produce the body of the prisoner at a certain time or place, with the day and cause of his caption and detention, to do, submit to and receive whatsoever the court or judge awarding the writ shall consider in that behalf: "Bour. L. Dic.; Crowley's Case, 2 Swans. 1; R. v. Cowle, 2 Burr. 855.

The writ is a high prerogative one, and the right to it is not created by statute, but is a common law right of very ancient origin: Re Bessett, 6 Q.B. 481; but it has been confirmed and regulated by various statutes: see Crabb's Hist. Eng. Law, 525.

The Habeas Corpus Act, 1679, 31 Car. II., c. 2, s. 2, provides for the issuing of the writ in all cases where a person is committed or detained for any cause (except for felony or treason plainly expressed in the warrant) upon the application of the person detained or any one in his behalf. It applies only to cases of detention or imprisonment for "criminal or supposed criminal offences."

The Ontario Habeas Corpus Act, R.S.O. c. 83, of which the Habeas Corpus Act, 1816, 56 Geo. III., c. 100, is said to be the prototype, extends the provisions of the Act of Charles II. to the cases of persons confined or restrained of their liberty otherwise than in "criminal or supposed criminal" matters, excepting persons imprisoned for debt or by process issued in any action or by the judgment, conviction or order of a Court of Record, Oyer and Terminer, or General Gaol Delivery, or General Sessions of the Peace, and provides that a judge of the High Court shall, upon complaint of such person, on affidavit or affirmation, that there is probable and reasonable ground for the complaint, award, at any time, a writ of habeas corpus under the seal of the court, directed to the person in whose custody or power the party so confined or restrained is, returnable immediately before the judge so awarding the same, or before the judge in chambers, for the time being, or before the High Court: R.S.O. c. 83, s. 1.

Scope of the Act.—The several provisions of the Ontario Act are extended to "all writs of habeas corpus awarded in pursuance of the said Act passed in England in the thirty-first year of the reign of King Charles the Second, or otherwise, in as ample and beneficial a manner as if such writs, and the said cases arising thereon, had been therein before specially named and provided for respectively:" R.S.O. c. 83, s. 7; R. v. St. Clair, 27 A.R. 310.

The Imperial statute, 31 Car. 2, as well as the English common law, are in force in Canada, having been introduced at the time of the adoption of its first constitution. The Ontario statute and the Habeas Corpus Acts of the other provinces of Canada are also valid, the Colonial Validities Act, 28 & 29 Vict., c. 63, providing that a Colonial statute is only invalid as against Imperial statutes, in so far as the provisions of the former may be repugnant to the latter: see also, R.S.N.S. c. 117; R.S.L.C. 95; R.S.N.B. c. 41; R. v. Cameron, 1 Can. Cr. Cas. 169.

The Ontario Habras Corpus Act is taken from the statute of the late Province of Canada, 29 & 30 Vict., c. 45 (which applied only to Upper Canada), and as the latter statute has not been repealed, and having been passed before Confederation, it is in force in Ontario regarding matters of criminal law over which the Dominion Parliament now has jurisdiction, without regard to the fact that it was included in the subsequent revision of the Ontario statutes, or to any changes made by the latter statute, and except in so far as impliedly repealed by the Criminal Code of Canada: 1 Can. Cr. Cas. 213. The R.S.O. c. 83 applies, however, to convictions, etc., for offences against provincial laws: see 2 Can. Cr. Cas. p. 306 (notes).

Restraint of Liberty.—Habeas Corpus may be applied for whenever the person has been in any manner restrained of his liberty to any degree whatever. It is not necessary that he should be actually incarcerated, but he may apply whenever he is deprived of the privilege of going when and where he pleases; so he may apply immediately upon being arrested, and while in the custody of a constable: 2 Just. 589; Re Cloutier, 2 Can. Cr. Cas. 43.

But a merely moral restraint is not sufficient: R. v. Davis, 1 Burr. 638(n); Hurd, 201.

As to what constitutes an arrest, see post "Execution of Warrant."

Every restraint upon a man's liberty is, in the eye of the law, an imprisonment, whatever may be the place, or what ever may be the manner in which the restraint is effected: 1 Kent, 631: 2 Just. 482, 589: Hurd, 201.

Persons discharged on bail will not be considered as restrained of their liberty, so as to be entitled to a writ of habeas corpus directed to their bail: Hurd, 201: but there is actual restraint if he be taken by the bail and delivered into custody, though not if he voluntarily surrenders himself: 15 Am. & Eng. Enc. 159.

Exceptions.—The statute 31 Car. II., c. 2, s. 2, excepts persons committed for felony or treason, plainly expressed in the warrant, as well as persons convicted or in execution by legal process. And the statute of Ontario excepts persons imprisoned for debt or by process issued in any action or by the judgment, conviction or order of a Court of Record, Oyer and Terminer or General Gaol Delivery or General Sessions. Such persons are, therefore, not entitled to the writ: R.S.O. c. 83, s. 1.

A County Judges Criminal Court is a Court of Record, and its process within the above exception: R. v. St. Denis, 8 P.R. 16; R. v. Burke (N.S.), 1 Can. Cr. Cas. 539; R. v. Murray (Ont.), 1 Can. Cr. Cas. 452: Re Sproule, 12 S. C. R. 140; R. v. Goodman, 2 O.R. 468: Re Ferguson, 24 N.S.R. 106.

But if any court should entertain a criminal prosecution beyond its jurisdiction, the proceeding would be void and the accused will be released on habeas corpus, as not being in ustody under any valid legal proceeding: Re Sproule, 12 S.C.R. p. 205; and see notes 1 Can. Cr. Cas. 546.

Where the party is in custody in execution, after conviction on indictment by a court having general jurisdiction of the case, for a criminal offence, the statute does not apply: Ex. p. Lees, El. Bl. & El. 828: Re Newton, 16 C.B. 97: Ex. p. Dunn, 5 D. & L. 345: R. v. Crable, 11 U.C.R. 447: Re Sproule, 12 S.C.R. 140; R. v. Burke, 1 Can. Cr. Cas. p. 544; Fleming v. Clarke, 12 Allen (N.B.) 191; Brenan's Case, 10 Q.B. 502.

An order to commit, in a civil suit in the County Court, is a "process of a Court of Record" within the exception in s. 1 of the statute: Re Anderson v. Vanstone, 16 P.R. 243.

The remedy of habeas corpus, and certiorari in aid of the same, applies not only to the case of a conviction and warrant of commitment by a justice of the peace, but also to those by a police magistrate under ss. 783, 784 of the Criminal Code. Although s. 798 provides that a conviction in the latter case shall have the same effect as a conviction upon an indictment by a Court of Record, yet it is not the same thing, and the magistrates' court is not a Court of Record, against the judgment of which habeas corpus does not lie: R. v. Gibson, 29 O.R. 660; R. v. St. Clair, 27 A.R. 308, and cases there cited; see also O'Reilly v. Allen, 11 U.C.R. 526.

Application for Writ.—The application may be made by the prisoner himself or by an agent or friend on his behalf: Cobbett v. Hudson, 15 Q.B. 988; Re Daley, 2 F. & F. 258; Re Thompson, 30 L.J.M.C. 19; Hurd, 203; Anne Gregory's Case, 4 Burr. 1991; R. v. Clarke, 1 Burr. 606.

It is not necessary that any legal relationship should exist between the applicant and the prisoner: The Hottentot Venus Case, 3 East, 195; but it cannot be made by a mere stranger, who shews no authority what ever on behalf of the person detained, and no right to represent him: Ex p. Child, 15 C.B. 238. But express authority from the prisoner is not necessary; it is sufficient if it appears that the prisoner is suffering involuntary and wrongful restraint: Hurd, 204; see Re Carmichael, 1 C.L.J. 243.

The writ will be granted to aliens as well as to British subjects: Hottentot Venus Case, 3 East, 195; R. v. Bessett, 6 Q.B. 481; but not to an alien prisoner of war: R. v. Schiever, 2 Burr. 765 It has been held that the writ may be applied for by an officer holding a warrant for the prisoner's arrest in another proceeding: Re Mineau, 45 Fed. Rep. 188.

The fact that, at the time of the application, the person against whom the writ is asked, has not in his custody or power the person said to be detained, is no ground for refusing the writ, if it appears that the person has illegally parted with such custody: R. v. Barnardo, 24 Q.B.D. 283; Barnardo v. Ford (1892), A.C. 326; Barnardo v. McHugh, 61 L.J.Q.B. 721, disapproving, R. v. Barnardo, 23 Q.B.D. 305.

"When the detention has ceased the writ is inapplicable, but when a counterfeited release has taken place and a pretended ignorance of the place of custody, or of the identity of the present custodian, is insisted on, the court ought to examine into the facts": per Halsbury, L.C., Barnardo v. Ford (1892), A.C. 326.

If a doubt is entertained by the court as to the proper disposition of the person detained, it is entitled to use the pressure of the writ to test the truth of the allegations and to require a return to be made to it: per Herschell, L.J., s.c.

A person confined or restrained of his liberty is entitled to one writ only, to be granted by any judge of the High Court, returnable before himself or another judge in chambers, or before the court: R.S.O. c. 83, s. 1: Taylor v. Scott, 30 O.R. 475.

The application may be made at any time: R.S.O. c. 83, s. 1; Re Paton, 4 Gr. 147; He Hawkins, 3 P.R. 239.

Security.—On habeas corpus the court can only deal with the question of the custody and restraint of the person, and has no power to quash the conviction or warrant. The rule passed under Code 892 (see ante p. 7) requiring security to be given does not, therefore, apply to these proceedings, and no security is necessary.

Affidavits in Support of Application.—An affidavit by the person imprisoned, disclosing grounds upon which the court can exercise its discretion, must be made; unless it is shewn that he is so coerced as to be unable to make an affidavit: R. v. Hobhouse, 3 B. & Ald. 420; Re Parker, 5 M. & W. 32; Re Ross, 2 P.R. 301; see R.S.O. c. 83, s. 1; 31 Car. II., c. 2, s. 2.

A copy of the warrant under which the person is detained must be produced, or the affidavit must shew that a copy has been denied: 31 Car. II., c. 2, s. 3; in which case it must also be shewn that there was a written demand for a copy, signed by the person in custody or someone on his behalf: Re Carmichael, 1 C.L.J. 243. This demand must be served on the gaoler himself, if he is there, and not on the turnkey: Huntley v. Luscombe, 2 B. & P. 530.

When a warrant of arrest was issued in Quebec and endorsed in Ontario, where the defendant was arrested, and the proceedings were not ultra vires, it was held that the High Court had no jurisdiction, on application for habeas corpus, to try on affidavits under s. 4 of R.S.O. c. 83, the question as to where the alleged offence was committed, (Ex. p. Smith, 3 H. & N. 227), nor to make an order under s. 5, these

sections not applying when no preliminary enquiry has taken place; and that an enquiry could not be made, in the manner provided for in Code 752, as to the question of the legality of the arrest, as that section only applies when the habeas corpus is issued in the same province where the warrant of arrest was issued, the court in Ontario having no authority over a magistrate in Quebec: R. v. Defries, 25 O.R. 645. A court or judge in Ontario has no authority over a justice in Quebec to compel him to take any proceedings or hear evidence in a prosecution under Can. Cr. Code: R. v. Tamblyn, 25 O.R. 645.

Notice of Application.—In criminal cases, notice of application for habeas corpus must be given to the Attorney-General: R. v. Taylor, 7 D. & R. 622: Hurd, 227. The application is by notice of motion to a judge in chambers, and not by rule nisi, and such rule if made will be discharged: R. v. Smith, 24 U.C.R. 480.

The following form of notice may be used:

NOTICE OF MOTION FOR WRIT OF HABEAS CORPUS.

In the High Court of Justice.

The King, on the information of E.F. against A.B.

Take notice that a motion will be made on behalf of the above-named A.B. before the presiding Judge in Chambers at Osgoode Hall, Toronto, on the day of A.D. 19, at ten o'clock in the forenoon, or so soon thereafter as the motion can be heard, whereon you are to shew cause why a Writ of Habeas Corpus should not issue to the keeper of the common gaol of the County of (or as the case may be) directing him to have before a Judge of the High Court of Justice for Ontario the body of the said A.B., a prisoner detained in his custody, that the court may cause to be done thereupon what of right and according to law the Court shall see fit to be done, and for a Writ of Certiorari in aid thereof, for the following among other reasons:

1—(State the reasons and grounds of application) And take notice that in support of such application will be read the affidavits of filed, and the exhibits therein referred to.

Dated this

day of

A.D. 19

To the Attorney-General for the Province of Ontario and to E.F., the prosecutor, and to C.D., the convicting Magistrate (or Justice).

Solicitors for the said A.B.

Form of Affidavit.—The form of affidavit for certiorari at p. 6, ante, may be used, adding the following clause:—

"That the paper writing now shewn to me marked exhibit A. to this my affidavit is a true copy of the warrant of commitment (or to apprehend) under which I am now confined in close custody of the keeper in the county gaol of the county of under the said warrant" (or as the case may bc) and I am not in such custody as a prisoner

in said gaol under any other warrant, or other authority, or for any other cause or matter.

If the warrant, on its face, does not disclose any ground for the detention of the prisoner, an affidavit in the following form will be sufficient:—

In the High Court of Justice.

The King against A. B.

I, A. B. of the (occupation) make oath and say:—

in the county of

- 1. I am the above named defendant.
- 2. That the paper writing shewn to me marked exhibit "A" to this my affidavit is a true copy of the warrant of commitment produced to me by the gaoler of the Common Gaol of the County of (or by the warden of the Central Prison in the city of Toronto, or as the case may be) as that under which I am now held in close custody in said gaol (or Central Prison) namely, on the day of A.D. 19
 - 3. That I am not guilty of the offence therein mentioned. Sworn, etc.

The affidavit must be entitled as in the case of an affidavit for certiorari: See ante, p. 4.

If the affidavits satisfy the court that the commitment was clearly without jurisdiction, the prisoner may be at once discharged on the application for the writ: Re Authers, 22 Q.B.D. 345; see 15 L.J. Q.B. 235.

Requisites of Writ.—The writ must be marked in the margin, "Per statutum tricesimo primo Carli Secundi Regis," and must be signed (usually in the margin) by the judge who grants it, and if not so signed no one is bound to obey it (see 1 and 2 Phil. & M. c. 13, s. 7): 31 Car. II., c. 2, s. 3; R. v. Roddam, Cowp. 672; R. v. St. Clair, 27 A.R. 308; see also R. v. Arscott, 9 O.R. 541; Arscott v. Lilly, 11 O.R. 153; Re Hallock, per Meredith, C.J., 15 C.L.T. 9; and it must be sealed with the seal of the court: R.S.O. c. 83, s. 2.

The writ is good without being marked "per statutum," etc., if it can be supported at common law, which was held not to be abrogated by the statute; Wilson's Case, 7 A. & E., N.S. 984: but, quere, whether the Ontario statute has not so limited the issuance of the writ that it cannot now be issued at common law: Re Sproule, 12 S.C.R. 140.

The person to be produced may be designated by his name, if known, or if it is unknown or uncertain, by any description, so as to make known who is intended.

ORDER FOR HABRAS CORPUS.

In the High Court of Justice.

Before the Honourable Mr. Justice day of A.D. 19

The King against A.B.

Upon the application of the above named A.B., upon reading the affidavit of the said A.B. filed, and a copy of the warrant of commitment marked "A." thereto and upon hearing counsel for the defendant.

1. It is ordered that a writ of Habeas Corpus do issue out of the High Court of Justice directed to the keeper of the Common Gaol for the county of (or the warden of the Central Prison for the Province of Ontario, in the City of Toronto, or as the case may be), directing him to have before me (or before a Judge of the High Court of Justice for Ontario) presiding in Chambers at Osgoode Hall, Toronto, forthwith on the receipt of the said writ the body of A.B. a prisoner detained in the custody of the said keeper of the said common gaol (or warden as the case may be), and that there may be caused to be done thereupon what of right and according to law it shall be seen fit to be done.

Clerk in Chambers.

To Whom Writ Directed.—The writ must be directed to the person in whose custody or power the party confined or restrained is: R.S.O. c. 83, s. 1. In criminal matters to the gaoler, and not to the sheriff, when the prisoner is in gaol: Bac. Abr. tit. Hab. Cor. s. 6; it should not be directed in the disjunctive, e. g., to the sheriff or the gaoler: ib.:—R. v. Fowler, 1 Salk. 293, 350; Ld. Raym. 586.

Issue of Writ.—The writ is issued from the office of the registrar of the High Court on præcipe, which may be endorsed on the order as follows:—

"Required a Writ of Habeas Corpus pursuant to the within order.

Bolicitor for the within named A.B.

Service of Writ.—The original writ must be served: R. v. Rowe, 71 L. T. 578; by delivering it to the person having the custody of the prisoner and to whom it is directed, or by leaving it with a servant or agent of such person at the place where the prisoner is in custody: R.S.O. c. 83, s. 2.

Return.—The officer or person to whom the writ is directed must, when service has been made on him, make a return: R.S.O. c. 83; and the body of the prisoner must be produced with the return, "upon payment or tender of the charges of bringing the prisoner, to be ascertained by the judge, and endorsed on the writ, not exceeding 12 pence per mile," and upon

security being given by the prisoner in his own bond, for payment of the charges of conveying him back to gaol, if he shall be remanded, and that he will not make any escape by the way: 31 Car. II., c. 2, s. 1. A return stating that the prisoner is not produced for want of means is not a good return: R. v. Reno, 4 P.R. 281; see Ex p. Martins, 9 Dowl. P.C. 194.

The court could, on consent of the prisoner, dispense with his attendance on the argument of a writ of error: Richards v. The Queen (1897), 1 Q.B. 574; and the court may now, and usually does, dispense with his attendance on habeas corpus, on the consent of his solicitor, endorsed on the writ, as follows:—

"I hereby dispense with production of the body of the within named A.B., in pursuance of the within writ.

Dated, etc.

E.F., Solicitor for the said A.B.''

FORM OF RECOGNIZANCE TO GAOLER.

Know all men by these presents that I, A.B., of the in the County of (occupation) am held and firmly bound unto the County of , in the sum of , in the sum for which sum to be well and truly paid I bind myself, my heirs, executors and administrators, by these presents.

Sealed with my seal and dated this A.D. 19

day of

Whereas I am now confined as a prisoner in the Common Gaol of the County of and a Writ of Habeas Corpus has been issued by the High Court of Justice for Ontario to inquire into the cause of my detention directed to the said gaoler.

Now the condition of this obligation is such that if I shall well and truly pay or cause to be paid to the said gaoler, upon demand, the charges of carrying me back to said gaol, if I shall be remanded on the said Habeas Corpus, and if I shall not escape by the way either in going to or returning from the place where I am to be produced under the said Habeas Corpus, then this obligation shall be void, otherwise the same is to remain in full force and virtue.

(8d.) [Seal.]

The return must be in writing, signed by the party to whom the writ is directed, stating the time and cause of the caption and detention of the prisoner: R. v. St. Clair, 27 A.R. 308; and his production before the court, or, if the prisoner be not produced, then the reasons for not producing him: Hurd, 235; see Barnardo v. Ford (1892), A.C. 326; Barnardo v. McHugh, 61 L.J.Q.B. 721: 15 Am. & Eng. Enc. of Law 195.

The original warrant under which the prisoner is detained should be attached to the return; a copy is not sufficient; Re Carmichael, 10 C.L.J. 325; Re Ross, 3 P.R. 301, not followed.

The law requires certainty in the statements of the facts: Watson's case, 9 A. & E. 731; see Douden's case, ib. 294; Nash's case, ib. 295; Re Parker, 5 M. & W. 32. A return which on its face is ambiguous is bad: R. v. Roberts, 2 F. & F. 272. As to the form of return, see R. v. McDearmid, 19 C.L.T. 329.

If the person confined is too weak, or too much deranged to be brought into court, it is a good return: R. v. Waight, 2 Burr. 1099; R. v. Turlington, 8 Burr. 1115; or if dangerously sick: Hurd, 249. In such cases an order may be made giving access to the prisoner detained; but only to persons who have some pretentions to demand it: R. v. Clarke, 3 Burr. 1362.

Affidavits by physicians or other satisfactory proofs should be produced to satisfy the court of the correctness of a return that a prisoner is too sick to be produced: Hurd, 249.

The consequences of an evasive return are fully exemplified in the leading case of Buller v. Winton, 5 T.R. 89; see also R. v. Suddis, 1 East, 306; Ex p. Krans, 1 B. & C. 258; Re Parker, 5 M. & W. 32; Watson's case, 9 A. & E. 731; R. v. Richards, 5 Q.B. 926; Ex p. Bessett, 6 Q.B. 481; R. v. Roberts, 2 F. & F. 272; Re Mathews, 12 Ir. R.C.L. 241; R. v. Jackson (1891), 1 Q.B. 671. The return need not be verified by affidavit: Watson's case, 9 A. & E. 731.

FORM OF RETURN TO HABBAS CORPUS.

By virtue of the within Order, I, G.H., Keeper of the Common Gaol in and for the County of do hereby return to the Honourable Mr. Justice (or, to the High Court of Justice for Ontario; or as the Writ directs) that A.B. is a prisoner in the County Gaol at aforesaid under and by virtue of a Warrant of Commitment which is hereto annexed, and that the said A.B. was committed to the said Common Gaol under and by virtue of the said Warrant on the day of A.D. 19, and the said A.B. is now detained in the said Common Gaol by virtue of the said Warrant and for no other cause or reason whatsoever (or as the case may be, setting out any other warrants of detention).

Dated at this day of A.D. 19 .

(Signed) G.... H....., Keeper of the said Common Gaol.

NOTE.—When the production of the body of the prisoner has not been dispensed with by an endorsement on the

writ to that effect by the solicitor for the prisoner, a clause is to be added to the above form stating that the body of the prisoner is produced; or if, for any sufficient reason, the prisoner cannot or should not be produced, attact that fact, and give fully and particularly the reasons for the same, as, for instance, that the prisoner's case comes within the exception in clause 1 of R.S.O. c. 83. A return must be made even if the person has been released from custody by the person detaining him: R. v. Gavin, 15 Jur. 329; and the impossibility of producing the party in obedience to the writ is a sufficient return, the writ being remedial and not punative: see Barnardo v. Ford (1892), A.C. 326, over-ruling R. v. Barnardo, 23 Q.B.D. 305.

But the return in such case must state distinctly and unequivocally why it is not obeyed with the facts shewing the reason therefor: R. v. Winton, 5 T.R. 89.

The return need not be verified by affidavit: but may be so fortified if defective, or the facts are insufficiently stated: R. v. Roberts, 2 F. & F. 272.

When Return to be Made.—The return must be made immediately: R.S.O. c. 83, s. 1. By 31 Car. II., c. 2, s. 2, the time for making the return is limited according to the distance, not exceeding twenty days.

Delay may be allowed if for good cause shewn: R. v. Clarke, 3 Burr. 1362.

It is not indispensable that the person making the return should himself attend with the prisoner: Re Hakewell, 22 Eng. L. and Eq. 395; 12 C.B. 223.

To Whom Made.—As to whom the return is to be made, see R.S.O. c. 83, s. 1, ante p. 33.

Amending Return.—Before the return is filed, any defect may be amended, at the peril of the officer: Anon. 1 Mod. 103: but after the return is filed, it becomes a record of the court, and cannot be amended: see 1 Mod. 102; without leave of the court: Re Clarke, 2 A. & E. N. S. 619; 2 Q.B. 619; R. v. Batcheldor, 1 P. & D. 516; Watson's case, 9 A. & E. 731; R. v. Wixon, 8 L.J.Q.B. 129.

Return—How Enforced.—Any person who wilfully neglects or refuses to make a return or pay obedience to the writ is deemed guilty of contempt of court, and the court or judge, upon proof by affidavit of wilful disobedience, may

issue a warrant for apprehending and bringing before the court or judge, the person so disobeying, to the end that he may be bound over in two sureties to appear in court at a day mentioned to answer the contempt: R.S.O. c. 83, s. 2.

If he refuses or neglects to become bound, he may be committed to gaol until he becomes bound or is discharged: R.S.O. c. 88, a. 3.

Proceedings for Contempt.—An application to commit will not be entertained except on notice to the party, informing him of the consequences of failure to obey: R. v. Hallock, 15 C.L.T. 9.

On motion to commit, an affidavit of service of the writ is required, and of search in the proper office, and that no return has been filed: or if an insufficient return has been made, an affidavit shewing that fact and verifying a copy of the return: Ex. p. Harrison, 2 Sm. 408; R. v. Winton, 5 T.R. 89; R. v. Gavin, 15 Jur. 329; R. v. Barnardo, 28 Q.B.D. 305; 24 Q.B.D. 288.

Contradicting the Return.—Although the return is good and sufficient in law, the court or a judge, before whom the writ is returnable, may examine into the truth of the facts set forth by affidavit or other evidence: R.S.O. c. 83, s. 4. And a judge in chambers has power to refer the matter to the court: R. v. Reader, 1 Stra. 531; Re Taurner, 15 L. & M. c. 140. It may be shewn on affidavit that the person, or one of the persons, who signed the warrant was not a duly qualified justice of the peace: R. v. Boyle, 4 P.R. 256; see post, "Appointment and Qualification of Justices"; and see Ex p. Beeching, 4 B. & C. 136; Re Crawford, 13 Q.B. 613; R. v. Douglass, 12 L.J. Q.B. 49; Ex p. Mainville, (Que.) 1 Can. Cr. Cas. 528.

Notice of Application for Discharge.—Upon serving the writ of habeas corpus a notice of application for the discharge of the prisoner must be served on the Attorney-General in criminal matters.

NOTICE OF MOTION FOR DISCHARGE.

In the High Court of Justice.

The King against A.B.

Take notice that (if short notice of motion is to be given, add, by special leave of the Honourable Mr. Justice this day given), an application will be made before the presiding Judge in Chambers at Osgoode Hall, Toronto, on day, the day of A.D. 19, or so

soon thereafter as the motion can be made, for the discharge of the said A.B. from the Common Gaol of the County of the case may be upon the return of the Writ of Habeas Corpus this day issued in pursuance of the order of Mr. Justice the County of the Keeper of the Common Gaol (or as the case may be) of the County of to have before one of the Judges of the High Court of Justice for Outspin the body of the said A.B. now in custody under the Warrant of Commitment issued in pursuance of a conviction made by C. it. Expulse, Police Hagistrate (or, a Justice of the Pea. Tor the of for the day of A.B. 19, did unlawfully (insert the charge as in the conviction or corrunt). And take notice that in support of such application will be read the affidavits of and and the exhibits the roll referred to and the return to the said Writ of Habeas Corpus and to the Writ of Certiorari issued in aid thereof.

Dated at this day of A.D. 10

The Attorney-General for the Province of Ontario.

Solicitor for the said A.B.

And to

The Prosecutor.

The Hearing.—On the return to habeas corpus the prisoner's counsel moves that it be filed, and that the prisoner be brought into court and then proceeds with the application for discharge. The court, although the return is good in law, may proceed to examine the truth of the facts set forth in it by affidavit or other evidence, and may order and determine touching the discharging, bailing, or remanding the prisoner: R.S.O. c. 83, s. 4.

Habeas corpus does not apply to mere irregularities or errors. It is the proper remedy, only, when the proceeding is void, and not merely voidable; and in the latter case, the remedy is by certiorari and motion to quash the proceeding.

The court will, under the Ontario statute, examine the proceedings including the evidence to see if they authorize the detention, and if insufficient, will discharge the prisoner: Ex p. Beebe, 15 L.T. 235; and see 17 C.L.T. 18. So, if the constable made an untrue return of no goods to a warrant of distress the court will discharge the prisoner from custody under a warrant issued on such return: Ex p. Kirkpatrick, 32 N.B.R. 187. The court will discharge the prisoner if the evidence taken on a preliminary enquiry, and brought up on certiorari, does not appear sufficient to warrant his commitment for trial: R. v. Mosier, 4 P.R. 64, in which case the subject of jurisdiction on habeas corpus was fully discussed. If there is any evidence upon which the magistrate may convict, he is the judge of its weight, and the court will not

rehear the case, or sit in appeal from his decision: R. v. St. Clair, 27 A.R. p. 310; R. v. Gillespie, (Que.) 1 Can. Cr. Cas., p. 561. See also the cases cited ante p. 20, "Certiorari."

The court will not question the justice's decision on the weight of the evidence, nor sustain objections to the justice's conduct of the case: R. v. Munro, 24 U.C.R. 44.

Affidavits were received to shew that a preliminary inquiry took place on Sunday, and that being shewn, and such proceeding being a judicial act and void (Re Cooper, 4 P.R. 256; and see *post*, "Sundays and Holidays") the prisoner was discharged: Re Cavelier (Q.B. Man., Taylor, C.J.), 16 C.L.T. 359.

By the provisions of the curative clauses of the Criminal Code, many defects which formerly invalidated convictions and warrants of magistrates and justices will not now do so; and powers of amendment are given to the courts before which such proceedings are questioned; see Code, 800, 808, as to convictions and warrants on summary trials before magistrates; and Code 846, 836, 889, 890 (amended by the Criminal Code Amendment Act, 1900, 65 Vict., c. 46) as to convictions and warrants by justices. These, and the convictions under them, and as to the powers of magistrates and justices to return amended convictions and warrants, and of the courts as to amendments, under Code 889, are fully discussed in the previous pages on the subject of certiorari and motions to quash proceedings, ante, p. 19 et seq., and what is there stated applies in these respects to proceedings on habeas corpus: see also R. v. Phipps, 11 W.R. 730; Ex p. Dauncey, 8 Jur. 829; Ex p. Welsh, 4 Rev. de Jur. 437; R. v. Reno, 4 P.R. 281; Ex p. Cross, 2 H. & N. 354.

The prisoner will not be discharged in the case of a defective warrant of commitment, if a conviction is recited, the court assuming it to be a valid one: R. v. Roper, 1 D. & R. 156; R. v. Taylor, 7 D. & R. 622; but the warrant must refer to a conviction, so as to give notice of it to those concerned: then both will be read together, and if the conviction justifies the warrant, it is sufficient: Daniel v. Phillips, 5 Tyr. 293; but if both are defective the prisoner will be discharged, unless the evidence sustains the conviction: see Code 889.

If the commitment is bad the prosecutor is the party to produce the conviction and evidence, with a view to amendment: 9 Q.B. 92, note; and this he can do by applying in time to bring them into court when the prisoner is brought up: see post, p. 49. It is for those who allege the conviction to be different from the recital of it, in the commitment, to bring it into court. Prima facie it is as so recited: Ex p. Reynolds, 8 Jur. 192; Arscott v. Lilly, 11 O.R. 153, 14 A.R. 297; Re Timson, L.R. 5 Exch. 257.

The commitment must state a conviction over which the magistrate had jurisdiction, and it will not be presumed: see Arscott v. Lilly, 11 O.R. 153; R. v. Kent, 8 Jur. 271; R. v. Kennedy, 11 Man. R. 338.

Effect of Discharge.—By s. 6 of 31 Car. II., no person discharged on habeas corpus shall be again imprisoned or committed for the same offence, other than by legal process or order of the court wherein he is bound by recognizance to appear, or other court having jurisdiction of the cause. This section has no application to a case in which the person was confined under a warrant in execution: Hunter v. Gilkinson, 7 O.R. 735; nor to the case of a person discharged from a commitment for trial, for defects in the proceedings; but only to prevent a prisoner, who has been committed for trial, and bailed under habeas corpus, from being re-arrested for the same offence, except by process or order of the court wherein he was bound under such bail to appear: Attorney-General v. Kwok-a-Sing, L.R. 5 P.C. 179.

The court, on habeas corpus proceedings, may make an order in any case for the further detention of the accused, and direct the justice to take any proceedings, hear such evidence and do such further act, as in the opinion of the court, may best further the ends of justice: Code 752.

Under this section the accused may be sent back for further evidence to be taken before the justice, or to be dealt with by a fresh warrant of commitment or otherwise.

In Arscott v. Lilly, 11 O.R. 153, Wilson, C.J., decided that when a prisoner had served a portion of the imprisonment under conviction, and had been released on bail pending appeal, and was afterwards discharged on habeas corpus for invalidity of the warrant: and a second warrant having been issued for the full period originally awarded, without deducting the time previously served in gaol, the warrant was valid, as the time so served might be endorsed upon the warrant or otherwise provided for.

If the return to habeas corpus shews a valid commitment, the court will not inquire when it was lodged with the gaoler, or whether there was a previous invalid commitment. So a valid commitment may be lodged with the gaolor, in place of an invalid one, even after habeas corpus has been served, and thus defeat the writ: Charter v. Graeme, 13 Q.B. 216; Chaney v. Payne, 1 Q.B. 712; Re Plunkett, 1 Can. Cr. Cas. 365; R. v. House, 2 Man. R. 58; see also Ex p. Cross, 2 H. & N. 354; Re Fell, 15 L.J.M.C. 25; Re Marks, 3 East, 57; Re Anderson, 20 U.C.R. 162; Ex p. Pap, 1 B. & Ald. 568; R. v. Gordon, 1 B. & Ald. 572.

In R. v. Richards, 5 Q.B. 926, Denman, C.J., said: "It is impossible not to see that there is a good warrant under which the party may lawfully be detained."

ORDER DISCHARGING PRISONER ON HABBAS CORPUS.

In the High Court of Justice.
The Honourable

Or (if the application is to the Court)

The Honourable
The Chief Justice
The Honourable
Mr. Justice
The Honourable
The Honourable
The Honourable

The King v. A.B.

1. Upon the application of the above-named A.B., upon reading the Writ of Habeas Corpus issued herein on the day of A.D. 19, and the return made thereto by , Keeper of the Common Gaol for the County of (or, as the case may be,) the Writ of Certiorari, issued on the said last-mentioned day, in aid of the said Writ of Habeas Corpus. Upon reading the information, conviction and proceedings returned by , Esquire, Police Magistrate (or Justice of the Peace) for the of , in compliance with the said Writ of Certiorari upon reading the affidavits of and the exhibits therein referred to, and upon hearing counsel for the Crown (and for the private prosecutor) and for the said A.B.

2. It is ordered that the said A.B. be, and he is hereby discharged, out of the custody of the said , the Keeper of the said Common Goal, (or, as the case may be,) as to his commitment made by the said , Esquire, Police Magistrate (or Justice of the Peace), aforesaid, on the information of for that (set out the charge, as in the commitment,) in so far as the said A.B. is held under the said warrant, and that this order be sufficient authority to the said Keeper of the said Common Gaol for the discharge of the said A.B.

al of }

Clerk in Chambers.

or

Registrar.

O

Ga

of

{ Seal of Court. }

Mr. Justice

Costs.—Costs may be ordered on an application for habeas corpus, but the power to award costs, should only be exercised in extreme cases, if at all: Re Murphy, 28 N.S.R. 196; London County Council v. Westham Overseers, (1892) 2 Q.B. 173; R. v. London (Jus.), (1894) 1 Q.B. 453; R. v. Jones, (1894) 2 Q.B. 382: Freeman v. General, etc., Co., (1894) 2 Q.B. 380; Re Fisher, (1894) 1 Ch. 453; see s. 190 Cr. R. N.S.: Ord. 63, r. 1, N.S. Jud.R. The Crown Rules, Nova Scotia, were made under the power conferred on the Superior Courts of criminal jurisdiction in the various provinces, by the Dom. Statute, 1889, c. 40: See ante p. . .

Certiorari in aid of Habeas Corpus. — Where the legality, or otherwise, of the restraint does not depend upon the validity or invalidity of the warrant, but upon that of the conviction or the sufficiency or insufficiency of the evidence, it will be necessary for the party, on whom the burden of proof lies, to bring up those proceedings; and a writ of certiorari may be obtained by either party for that purpose, as provided by R.S.O. c. 83, s. 5. (ertiorari in aid of the writ of habeas corpus may be applied for at the same time as the latter writ; or it may be issued at any time, and the case is then heard upon the habeas corpus and the proceedings brought up on certiorari: 1 Chitty's Cr. Law, 127, 129: 2 Strange, 911, note 1; R. v. Marks, 3 East, 157. If the habeas corpus proceedings are based upon a bad warrant of commitment, it will be necessary for the prosecution to take steps, by certiorari, in sufficient time to have the evidence and conviction brought into court, when the prisoner is brought up on the writ of habeas corpus; for the court may not adjourn the application for the prisoner's discharge and detain him in gaol, on the suggestion that there is a good conviction: Re Tim-

FORM OF ORDER FOR CERTIORARI IN AID OF HABEAS CORPUS.

In the High Court of Justice.

The King on the information of C. D. against A.B.

1. Upon the application of ('.D., the prosecutor above named (or of A. B. above named, a prisoner now confined in close custody in the Common) upon reading the affidavit of the said and the exhibits therein referred to, this day filed, and a Writ of Habeas Corpus having been issued to bring the body of the said A.B.

2. It is ordered that a Writ of Certiorari in aid of the said Writ of Habeas Corpus, do issue out of the Court (proceed as in Form ante If the certiorari is applied for at the same time as the writ of habeas corpus, both may be inserted in one order.

No notice under the statute of Geo. II., nor any recognizance is required on issuing certiorari in aid of habeas corpus: R. v. Nunn, 10 P.R. 395.

Custody Pending Argument.—The writ of habeas corpus supersedes all other processes under which the party may be detained, consequently, on the return of the writ, and production of the body of the person detained, he is in the custody of and subject to the order of the court to which the return is made, and he may be bailed de die in diem, or remanded to any gaol under the control of the court. He may be brought before the court, from time to time, by its order until the matter is finally disposed of: R. v. Bethel, 5 Mod. 19.

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Appeal.—A person who has been brought before the court or a judge on habeas corpus, and is remanded to custody, upon the original warrant of commitment or by virtue of any warrant, order or rule of such court or judge, may appeal from the judgment to the Court of Appeal. The writ, the return thereto, the affidavits, depositions, evidence, conviction, and other proceedings, are ther certified by the proper officer (the Registrar or Clerk in charabers), under the seal of the court, to the Court of Appeal, which is required to hear and determine the matter without formal pleadings: R.S.O. c. 83, s. 6.

If the Court of Appeal determines that the restraint is illegal, the fact must be certified by such court under seal to the person having the custody or charge of the person confined or restrained, and order his immediate discharge, and he shall be discharged accordingly: ib.

The right of appeal must be exercised in the manner provided by the statute, and therefore an appeal from a judge in chambers must be to the Court of Appeal: Re Harper, 23 O.R. 63; Taylor v. Scott, 30 O.R. 475.

The statute 29-30 Vict., c. 45, substituted the right of appeal, in habeas corpus cases, for successive applications from court to court: Re Hall, 8 A.R. 135.

Supreme Court.—The Supreme Court of Canada has, as regards habeas corpus in criminal matters, only concurrent jurisdiction with the judges of the Superior Courts of the various provinces and not an appellate jurisdiction; and there

is no necessity for an appeal, as the party may apply direct to a judge of the Supreme Court independently, from whose decision an appeal lies by either party to the full court: per Ritchie, C.J., Re Boucher, Cassels' Dig. 182; see Re Trepanier, 12 S.C.R. 111; Re Lazier, 29 S.C.R. 630; R. v. The Troop, ib. 662; Ex p. Macdonald, 27 S.C.R. 683; Re Sproule, 12 S.C.R. 140.

But the jurisdiction of the Supreme Court is limited to cases under Dominion statutes: Re Sproule, supra.

Section 34, of the Supreme Court Amendment Act, does not, in any case, authorize the issue of certiorari in aid of the writ of habeas corpus granted by a judge of the Supreme Court in chambers; nor does it authorize the court to do so for the purposes of an appeal from the judge: Re Trepanier, 12 S.C.R. 111.

The Supreme Court has jurisdiction to quash a writ of habeas corpus improvidently issued by a judge of that court. And a writ issued by a judge can only be enforced by attachment by the Court. Section 51 does not deprive the court of the right to do so: Re Sproule, supra.

An application to quash a writ of habeas corpus as improvidently issued, may be entertained in the absence of the prisoner: *ib*.

Section 70, R.S.O., c. 83, does not apply to the Supreme Court: Re Trepanier, 12 S.C.R. 111.

The jurisdiction of a judge of the Supreme Court is limited, in matters of habeas corpus, to an inquiry into the cause of commitment as disclosed by the warrant of commitment: Ex p. Macdonald, 27 S.C.R. 683.

The Supreme Court has no power to quash a conviction, but if the conviction shews a want of jurisdiction, or if it is shewn, in any way, that the magistrate had no jurisdiction, the conviction and commitment thereon, are a nullity; and the court will discharge the prisoner on habeas corpus, because he is not held by process of any legal tribunal. But a valid conviction standing against the prisoner, and the warrant being regularly issued, the court cannot discharge him or undertake the duty of sitting in appeal from magistrates' decisions, either by way of certiorari or habeas corpus: Re Trepanier, supra.

Appeals to Privy Council.—Code 751 prohibits any appeal in any criminal proceeding from any court in Canada

to the Privy Council.

It was said in Falkland Is. Co. v. The Queen (1 Moo. P.C. N.S. 312), that "it may be assumed that the Queen has authority by virtue of her prerogative, to review the decisions of all colonial courts, whether the proceedings be of a civil or criminal character, unless Her Majesty has parted with such authority."

It may well be questioned, therefore, whether the 'ode

751 is not ultra vires of the Canadian parliament.

In the same case it was further stated, "that the inconvenience of entertaining such appeals, in cases of a strictly criminal nature, is so great, the obstruction which it would offer to the administration of justice is so obvious, that it is very rarely that applications to this Board have been attended

by success."

If this section of the Criminal Code should be held to be ultra vires, the Privy Council will not grant leave to appeal in criminal cases, unless it is shewn that by a disregard of the forms of legal process, or by some violation of the principles of natural justice, or otherwise, some substantial and grave injustice has been done: see Ex p. Dillet, L.R. 12, A.C. 459, in which leave to appeal was allowed: re-affirmed in Ex p. Carew, (1897) A.C. 719, in which it was refused.

Rules of Court .- The High Court is authorized to make rules: R.S.O. c. 83, s. 8; (see s. 533 Cr. Code). No rules have been made under this section. The rules made under the Ontario Judicature Act do not affect procedure in criminal matters: Con. R. 4; see also s. 191 of the Act. R.S.O. c. 51: R. v. Eli, 13 A.R. 526; R. v. Cushing, 26 A.R. 248. As to what are "criminal matters," the test under the section of the English Act, which is almost identical with the above s. 101, was held to be whether it is a matter in the result of which the party may be fined or imprisoned: Seaman v. Burley, (1896) 2 Q.B. 344; R. v. Fletcher, 2 Q.B.D. In the latter case the term," criminal proceeding was held to include proceedings in the High Court in respect of matters before justices and magistrates; see also R. v Central Cr. Court, 18 Q.B.D. 314; Ex p. Schofield, (1891) 2 Q.B. 428; Ex p. Bowman, 22 L.R Ir. 334.

And an application by a party to a civil suit against a person who is not a party for contempt is a "criminal matter": O'Shea v. O'Shea, 15 P.D. 59; Ellis v. The Queen, 22 S.C.R. 7, distinguishing R. v. Barnardo, 23 Q.B.D. 305, the distinction being that in the Barnardo case the proceedings were to enforce obedience to an order made against the party to a civil suit; while in the case of Ellis v. The Queen, the original proceeding was for a "punitive" purpose. A proceeding to recover a penalty for the infraction of a statute is a criminal matter: Southport v. Berkdale, 76 L.T. 318.

As to other cases on the same point, see Re Hardwick, 12 Q.B.D. 148; Ex p. Eede. 25 Q.B.D. 228; Cox v. Hakes, L.R. 15 App. Cas. 506.

CHAPTER III.

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1 ROHIBITION.

Prohibition will he granted by the High Court, as a matter of prerogative at any time and in any case, to restrain an inferior judicial officer from exercising a jurisdiction which he does not possess: Re Chapman and London, 19 O.R. 33; and that is the proper remedy: Mayor of London v. Cox, L.R. 2 H.L. 239.

It is, however, an extreme measure, and is only granted in a very plain case of excess of jurisdiction: Re Birch, 15 C.B. 743; Re Cummings and County of Carleton, 25 O.R. 607; 26 O.R. 1.

It will be granted where the justice's proceedings are a denial or perversion of right, which is always an excess of jurisdiction: Trimble v. Miller, 22 O.R. 500: Goold v. Hope, 20 A.R. 347; R. v. Local Govt. Board, 10 Q.R.D. 321. Re Hickson and Wilson, 17 C.L.T. 303.

mon. "most immediately before the trial, and the justice having"used to adjourn, the proceeding was held to be in denial of right and contrary to natural justice, and so, in excess of jurisdiction: R. v. Eli, 10 O.R. 727; R. v. Mabee, 17 O.R. 194; R. v. Smith, L.R. 10 Q.B. 604.

Prohibition will not be granted as a means of review or appeal, but only to keep the inferior court within the limits of its jurisdiction, from which it has departed, or is about to depart: Hudson's Bay Company, etc. v. Jonnette, 23 S.C.R. 415.

It will not be granted to remedy an illegality in procedure merely, unless it amounts to an excess of jurisdiction: R. v. Mayor of London, 69 L.T. 721; or violates some fundamental principle of justice, per Lush, J., in Martin v. Mackonachie, 3 Q.B.D. p. 739.

So it will not be granted for refusal to hear a witness, an adequate remedy existing by appeal, or certiorari and motion to quash proceedings improperly taken; and it there is no such appeal, then there is no remedy: Mayor of London v. Cox, supre; Breton v. Landrey, Q.R. 13 S.C. 31.

It will not be granted to rectify a decision upon a nexter of fact, within the jurisdiction of the justice, however erroneous: Bar of Montreal v. Honan, Q.R. 8 Q.B. 26; Re Field v. Rice, 20 O.R. 309; R. v. Cunerty, 26 O.R. 51; Beaupre v. Desnoyers, Q.R. 11 S.C. 541; R. v. McIntosh, 17 C.L.T. 407: nor the mis-construction of a statute; if the justice does not thereby wrongly give himself jurisdiction: Elston v. Rose, L.R. 4 Q.B. 4; R. v. Judge of Lincolnshire, 20 Q.B.D. 167; Re Long Point Co. v. Anderson, 18 A.R. 401; Re Dyer v. Evans, 30 O.R. 637; nor for the erroneous determination of a question of law or fact within the officer's jurisdiction: Re Chisholm and Oakville, 12 A.R. 225.

If the officer has jurisdiction over the subject matter, prohibition does not lie upon the ground that he may have made a mistake in the manner of exercising it: R. v. J.J. Kent, \$\mathbb{R}\$ Q.B.D. 181.

But a justice's decision, not only on a matter of law, but on a matter of fact also, is reviewable on application for prohibition, if such decision is on a matter essential to jurisdiction; but only upon strong grounds: Liverpool v. Everton, L.R. 6 C.P. 414.

After a conviction has been quashed on the ground that the summons was not properly served, a justice has no jurisdiction to issue another summons on the same information, and he will be prohibited from doing so: R. v. Zickrick, 11 Man. R. 452.

Prohibition will be granted against the unlawful exercise of judicial functions; but not against merely ministerial acts, such as improperly issuing a distress warrant, if the conviction is valid on its face, and within the justice's jurisdiction: R. v. Coursey, 27 O.R. 181.

It will be granted against any officer attempting to exercise judicial (but not ministerial) functions over a person not before him: Re Hickson and Wilson, 17 C.L.T. 308.

Prohibition lies to a coroner: R. v Hertford, 3 E. & B. 115; Re Haney v. Mead, 34 C.L.J. 380.

Prohibition will be granted upon the application of a stranger to the proceedings when a justice is clearly exceeding his jurisdiction, as such is a contempt of the Crown: Worthington v. Jeffries, L.R. 10 ('.P. 379; Chambers v. Green, L.R. 20 Eq. 552; De Haber v. Portugal, 17 Q.B. p 171; Wallace v. Allan L.R. 10 C.P. 607.

It must be granted as a matter of right, if the total want of jurisdiction appears on the face of the proceedings; and in that case no consent or waiver will deprive the applicant of it: Farquharson v. Morgan, (1894) 1 Q.B. 552. But if the want of jurisdiction is not apparent, it is discretionary with the court to grant or refuse prohibition; and it may then be refused if the grounds of want of jurisdiction were not brought by the applicant before the attention of the justice: Broad v. Perkins, 21 Q.B.D. 533. If, however, the grounds of want of jurisdiction were brought to the justice's notice, it is the same as if the defect was apparent on the proceedings: Sherwood v. Cline, 17 O.R. 30.

Taking a step in the proceedings is a waiver: Re Jones v. James, 19 L.J. Q.B. 257. But it is not necessary that the applicant should have made personal objection, and had it over-ruled: De Haber v. Portugal, 17 Q.B. 171.

If any justice who is interested in the subject matter sits on the case, prohibition will be issued against the proceeding; see post "Disqualifying Interest."

The application for prohibition may be made at the outset of the proceedings, or at the latest stage if the want of jurisdiction is apparent and there remains anything to prohibit: Re Brazill v. Johns, 24 O.R. 209.

An appeal is no bar to prohibition: Harrington v. Ramsay, 8 Exch. 879; Re Rochon, 31 O.R. 122; but pending an appeal, prohibition will not be allowed: Wiltse v. Ward, 9 P.R. 216.

Costs will be allowed to the successful party: McLeod v. Emigh (2), 12 P.R. 503; Wallace v. Allan, L.R. 10 C.P. 607; R. v. J. J. London (1894), 1 Q.B. 453.

The application is made to a judge of the High Court in chambers, and may be appealed to the court, or it may be made to the court in the first instance, but there is no appeal to the Court of Appeal: R. v. Cushing, 26 A.R. 248.

FORM OF NOTICE OF MOTION FOR PROHIBITION.

In the High Court of Justice.

In the matter of an information (or complaint) before E.F., Esquire, a Justice of the Peace in and for the County of , by A.B. against C.D., for (set out the charge).

Take notice that a motion will be made on behalf of the above named C.D. before the presiding Judge in Chambers at Osgoode Hall, in the City of Toronto, on , the day of , 19 (a Judge sits on Mondags and Fridays), at the hour of o'clock in the fore-

noon, or so soon thereafter as the motion can be made, for an order that be prohibited from taking any further proceedings in the of said matter, and particularly from convicting the said C.D. on the said charge (or as the case may be), on the grounds that the said E.F. has no jurisdiction over the same (or as the case may be, stating the grounds), and upon grounds disclosed in the affidavit of the said C.D. (and

), filed herein, or for such other order as may be proper. And take notice that upon such motion will be read the amdavit of the said C.D., this day filed herein (and any other affidarits), and the exhibits

therein referred to.

Dated this

day of

, A.D. 19 ,

(Signed)

G. H..

Solicitor for the said C.D.

To the said A.B., and to E.F., Esquire, the said Justice.

FORM OF AFFIDAVIT FOR PROHIBITION.

In the High Court of Justice.

in the matter of an information (or complaint) laid before E.F., Esquire, a Justice of the Peace in and for the County of A.B. against C.D. for (set out the charge). , of the , in the County of (merchant), make oath and say: -

1. That I am the above named C.D.

2. That on or about the mation was laid by the above named A.B., a true copy of which is now day of shewn to me marked Exhibit A.

3. On the day of , A.D. 19 , I was served with the copy of summons thereon, which is now shewn to me marked Exhibit B.

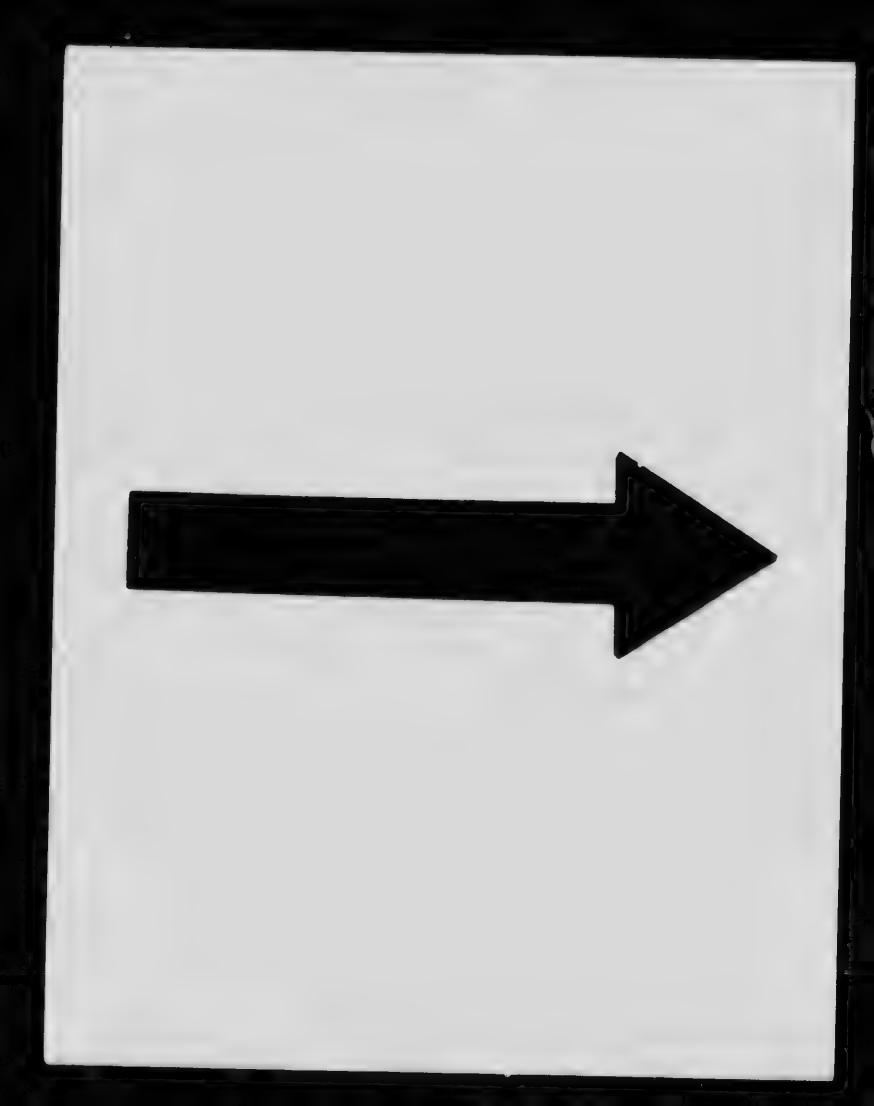
4. That the said matter came on for trial before E.F., of the , in the County of , a Justice of the Peace in and for the said County, and I thereupon, through G.H., my counsel or agent (as the case may be), objected to the jurisdiction of the said Justice of the Peace to entertain the said information and proceedings, or to hear the said matter, inasmuch as I claimed to justify the said alleged trespass by right and title to the land upon which the said trespass was alleged to have been committed.

5. That I did there and then offer to prove before the said Justice that I did bond fide claim the right and title to the said land, and that the same was my land and freehold (or whatever other fact or facts were relied on before the said Justice as shewing the want of jurisdiction), and that I had reasonable grounds for my said claim.

6. That the said land upon which the said alleged trespass was supposed to be committed is (describe the property).

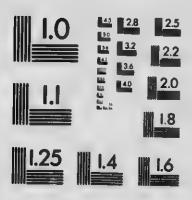
7. That I did at the time when the said supposed trespass was committed hand fide claim, and from thence continually hereto have bond fide claimed and still claim the soil or freehold of 'he said land (or as the case may be) by virtue of a conveyance (or as he case may be) thereof heretofore made to me by one G.H., dated the (or in such other way as the party claims title). day of

8. That the said land so alleged to have been trespassed upon is a part of the land so conveyed (or as the case may be) as aforesaid; and that the said A.B. in the said proceeding claims the said land adversely



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to me, and contends, as I believe, that it belongs to him, which, I say, is not the case.

9. That the said Justice (or Magistrate), notwithstanding my first objection, and notwithstanding my said offer to prove my said claim of title, and that I had reasonable grounds therefor, did proceed, and is preceeding, to hear and determine the said matter.

Sworn, etc.

The above affidavit may be so framed, and set forth such facts, as are necessary to meet the particular case.

The affidavits are usually intitled in the Court merely, and not in any cause: R. v. Plymouth, 37 W.R. 334; but it is no objection that they are intitled in the names of the parties, as in the above form: Breeden v. Capp, 9 Jur. 781.

FORM OF ORDER FOR PROHIBITION.

In the High Court of Justice.

The Honourable Mr. Justice Monday, the day of

In Chambers.

In the matter of an information laid before E.F., Esquire, a Justice of the Peace (or Police Magistrate), for the

A.D. 19

by A. B. against C. D. for (set out the charge).

Upon the application of the above named C. D. an upon reading his affidavit filed, and upon hearing the Solictors (or Counsel) for said A.B. and C.D. respectively, and it appearing that the said E.F., Esquire, as such Justice of the Peace (or Magistrate) has no jurisdiction to hear and determine the said matter, by reason that (state facts shewing want of jurisdiction), it is ordered that the said E.F., Esquire, as such Justice (or Magistrate), be and he is hereby prohibited from further proceeding in the matter of the said information, and that a Writ of Prohibition do issue accordingly; and it is further ordered, that the costs of this application be paid by the said A.B. to the said C.D.

CHAPTER IV.

MANDAMUS.

The High Court is invested with the prerogative right to compel, by mandamus, inferior tribunals—such as justices and magistrates—to exercise the jurisdiction which they possess, and to perform any specific act which it is their legal duty to perform: See Shortt on Informations 223.

By R.S.O. c. 88, s. 6, special provision is made for an order by the High Court, or a county judge, for the county in which the justice resides, to compel him to do any act relating to duties of his office.

If there is some other specific remedy, equally convenient and adequate, such as an appeal from the justice, the remedy by mandamus will not be adopted: R. v. Askew, 4 Burr. p. 2188; R. v. Joint Stock Co.'s Registrar, 21 Q.B.D. 131; Re Marter and Gravenhurst, 18 O.R. 243; R. v. Charities Commissioners, (1897) 1 Q.B. 407; R. v. Mayor of Hastings, (1897) 1 Q.B. p. 49.

But even if there is another remedy, mandamus will be granted, if the former is not equally advantageous: R. v. Stewart, (1896) 1 Q.B. 303; R. v. Leicester, (1899) 2 Q.B. 632; or, if the alternate remedy is doubtful, or if granting it will work an injustice: R. v. Garland, L.R. 5 Q.B. 269.

And the court will be vigilant to apply the remedy by mandamus where it is reasonably applicable: Mayor of Rochester v. The Queen, 27 L.J.Q.B. 434.

The remedy by mandamus is discretionary, and will be granted or refused as the circumstances of each particular case in the excercise of a judicial discretion are deemed to require: R. v. Garland, L.R. 5 Q.B. 269; R. v. Wigan, 1 App. Cas. 622.

It is only granted to compel the performance of a duty, and not to undo what has been done: Ex p. Nash, 15 Q.B. p. 95.

The applicant must have the legal right to the performance of the act required to be done: Ex p. Napier, 18 Q.B.

p. 695; R. v. Hertford, 3 Q.B.D. p. 701; R. v. Littledale, L.R.
12 Ir. p. 101; R. v. Lewisham, (1897) 1 Q.B. 498; Peebles v.
Oswaldtwistle, (1897) 1 Q.B. 625; R. v. Peterborough, 44
L.J.Q.B. 85.

And it will not be granted on application of a person who has no interest in the performance of a duty, or who is not appealing bona fide: R. v. Liverpool Ry. Co., 21 L.J.Q.B. 284.

The application must be for the performance of an act which it is the legal duty of the officer to perform: Ex p. Nash, 15 Q.B. p. 95; R. v. G.W.R. Co., 62 L.J.Q.B. 572; R. v. Bexley, (1898) A.C. 210.

And the officer's jurisdiction must be clear: Pearson v. Glazebrook, L.R. 3 Ex. 27; Trainor v. Holcombe, 7 U.C.R. 548; Re Jackson v. Clarke, 36 C.L.J. 68.

Discretionary Powers.—If the justice is interested in the subject matter (see *post*, "Disqualifying Interest") he is right in refusing to take the case, and the court will not compel him to act: Re Co. Judge of Elgin, 20 U.C.R. 588.

The obligation to perform the act must be imperative; and a mandamus will not be ordered to enforce a mere discretionary power, not, amounting to an absolute duty: R. v. Mayor of Westlove, 5 Dowl. & Ry. 414; R. v. Bishop of Oxford, 4 Q.B.D. 553.

The word "may" in statutes is construed as permissive or optional, and the word "shall" as imperative: R.S.O. c. 1, s. (8); R.S.C. c. 1, s. 7 (4).

Such is the general principle of statutory construction; and the word "may," or "it shall be lawful," or "if he deems it advisable," are in themselves merely permissive, and do not import a duty. But notwithstanding the above general rule of interpretation, if the subject matter shews that it must have been intended that the exercise of the power should be imperative, it will be so: per Crompton J., Re Newport, 29 L.J.M.C. 53; Julius v. Oxford, L.R. 5 A.C. 214; Paley, 6th ed. p. 37 (x); R. v. Bailiffs, 1 B. & C. 86; Girdlestone v. Allen, 1 B. & C. 61.

"May" was held compulsory in McDougall v. Paterson, 11 C.B. 755; and directory in R. v. Bishop, 29 L.J.Q.B. 23.

So, when the statute by any of the above mentioned, words confers authority upon a judicial officer to do an act, whether judicial or ministerial, a duty is imposed to perform

the act when the occasion for it arises, and it is applied for by a person entitled to have it done; and it is imperative: Cameron v. Wait, 3 A.R. p. 193.

The word "may" in such cases imports a judicial discretion, and not a power to arbitrarily refuse: but confers authority to consider and decide, which the officer is bound to exercise. As, for instance, a mandamus will be ordered to compel a justice to issue a search warrant, under Code 569, the word "may," in sub-s. (c), conferring a power and involving a duty, which must be done upon the arising of the contingency calling for its exercise: see Maxwell on Statutes, 218; Cameron v. Wait, supra: McDougall v. Paterson, 11 C.B. 755; Crake v. Powell, 3 E. & B. 210; Aitcheson v. Mann, 9 P.R. 473; Barnardin v. Dufferin, 19 S.C.R. 581; Dwyer v. Port Arthur, 21 O.R. 175; Matton v. The Queen,

A power given for the furtherance of justice, or when the thing to be done is for the public benefit, or in advancement of public interest, is given to be exercised, and is a command: R. v. Bishop of Oxford, 4 Q.B.D. p. 553.

Mandamus will be ordered to compel the pc nance of judicial as well as ministerial powers; and where he duty is merely ministerial, its performance will be compelled as a matter of course: R. v. Mayor of Fowell, 2 B. & C. 596: R. v. Payne, 6 A. & E. p. 399.

A justice will not be compelled by mandamus to issue a warrant of distress or commitment: Ex. p. Thomas, 11 J.P. 295; Re Delaney v. McNab, 21 C.P. 563: Ex. p. Lewis, 21 Q.B.D. 191.

If the duty is of a judicial character, its performance will be enforced only where it has been refused, and not where it has been improperly performed. The court will not dictate what judgment another tribunal shall give: R. v. Middlesex (Jus.), 9 A. & E. p. 546.

Where a discretion is vested in a subordinate tribunal the court cam mpel a particular course to be adopted: R. v. Carden, j. J.D. 1; the bona fide exercise of the discretion by the ribunal, is a complete justification: Re White v. Galbraith, 12 P.R. 513; Re Jackson v. Clark, 36 C.L.J. 68; Ex p. Cook, 3 Can. Cr. Cas. 72. But where the justice is required by the law to exercise his judicial discretion, he is not at liberty to arbitrarily refuse to perform the act in ques-

tion, or to refuse to consider the matter; and if he does so, or if he by wrongly deciding a preliminary point of law, or upon extraneous considerations or otherwise, (upon a mistaken view of the law,) improperly refuses to hear a case, or to do what the law provides that it is his duty to do, the court will order a mandamus. But if he really and bona fide considers the matter and exercises his discretion, his decision however erroneous, will not be interfered with by mandamus; but it is a ground of appeal from his judgment: R. v. Richards, 20 L.J.Q.B. 352; R. v. J. J. North Kiding, 2 B. & C. 291; R. v. Worcester (Jus.), 3 E. & B. 477; R. v. West Rid. (Jus.), 11 Q.B.D. 417; Churchward v. Coleman, L.R. 2 Q.B. 18; R. v. J. J. Middlesex, 2 Q.B.D. 516; R. v. De Rutzen, 1 Q.B.D. 55; R. v. King, 20 Q.B.D. 430; R. v. Conolly, 22 O.R. 220; R. v. Bowman, (1898) 1 Q.B. 663; R. v. Sharman, (1898) 1 Q.B. 578.

The justice's discretion must be exercised bona fide and not arbitrarily: R. v. Cumberland (Jus., 4 A. & E. 695; R. v. Fawcett, 19 L.T. 396; R. v. Adamson, 1 Q.B.D 201.

Mandamus will be ordered to compel a justice to receive an information, which is a ministerial duty: Ci le 558, 843; R. v. Kent (Jus.), 14 East, 317; R. v. Richards, 20 L.J.Q.B. 352; Re Monmouth, L.R. 5 Q.B. 251.

On receiving an information a justice is required by Code 559 to hear and consider (personally, so that he may properly form his judgment: Dixon v. Wells, 25 Q.B.D. 249) the allegations of the complainant, and determine whether further proceedings are warranted or not. This is a judicial act: R. v. Ettinger, 3 Can. Cr. Cas. 387; Hope v. Evered, 17 Q.B.D. 338; Ex p. Lewis, 21 Q.B.D. 191; Lea v. Charrington, 23 Q.B.D. 45, 272; and the justice cannot in mere caprice refuse to issue a process. He must hear the matter and adjudicate, either that a prima facie case is stated, or that even assuming the prosecutor's statement to be true, it is clear that no offence within the j. ice's cognizance is shewn; or that it is of too frivolous a character to justify legal proceedings: Selwood v. Mount, 9 C. & P. 75; R. v. Bather, 42 L.T. 532; R. v. Huggins, 60 L.J.M.C. 139; R. v. Ingham, 14 Q.B. 396.

If the justice should act from mere caprice, or opinion as to what the law ought to be, instead of administering the law as it is; or if he refuses to proceed upon an erroneous ruling in regard to a point of law, the court will compel him to hear and determine the matter, free from such erroneous view: R. v. Botelier, 4 B. &. S. 959; R. v. Durham (Jus.), 19 L.T. 596; R. v. Gooderich, 19 L.J.Q.B. 413; Fournier v. De Montigny, Q.R. 10 S.C. 292.

But if he really adjudicates and decides, in the exercise of his judgment, that the facts do not constitute any offence over which he has authority, his decision is not open to question on an application for mandamus, but is a subject o appeal: R. v. Paynter, 7 E. & B. 327; R. v. Dayman, 7 E. & B. 672; Ex. p. McMahon, 48 J.P. 70; Ex. p. Reid, 49 J.P. 600; R. v. Cotham, (1898) 1 Q.B. 802; Re Parke, 30 O.R. 498; 3 Can. Cr. Cas. 122; R. v. Carden, 5 Q.B.D. 1; Re Holland, 37 U.C.R. 214; R. v. Connolly, 22 O.R. 220.

The justice is not bound to announce the reasons for his decision, but it will be assumed that he did his duty properly, unless the circumstances shew the contrary: Thompson v. Desnoyes, 3 Can. Cr. Cas. 68.

But where the facts so clearly established a prima facie case that the court saw that the justice's refusal to proceed was really a declining of jurisdiction improperly, a mandamus was issued: R. v. Adamson, 1 Q.B.D. 201.

A mandamus will not be ordered upon improper rejection or reception of evidence: R. v. Yorkshire (Jus.), 53 L.T. 728; R. v. Sanderson, 15 O.R. 106; R. v. Connolly, 22 O.R. 220; nor if the decision is wrong, in law or in fact, as to whether an offence is made out; if the justice has really and bona fide exercised his judgment and discretion. R. v. Byrde, 60 L.J.M.C. p. 19.

But if, by misconstruing a statute, he decides improperly, that he has no jurisdiction, mandamus will be granted: R. v. Cloete, 64 L.T. 90; or if he refuses to act on any ground from a mistaken view of his jurisdiction amounting to a declining of it; R. v. Fawcett, 11 Cox, C.C. 305; R. v. Mead, 77 L.T. 462; (1898) 1 Q.B. 110; or upon considerations outside the provisions of the law: R. v. London (Jus.), (1895) 1 Q.B. 214, 616; R. v. Cotham, (1898) 1 Q.B. 802.

If a justice refuses to grant process, the prosecutor is not entitled to require the justice to bind him to prosecute, under Code 595, as that section is only applicable when the defendant has been before the justice and the case is dismissed: Ex p. Reid, 49 J.P. 600; but see Ex. p. Wason, L.R. 4 Q.B. 573.

If a justice refuses to hear a witness for the defence on

the ground that it is not so provided by statute, he will be compelled by mandamus to do so, for it is a clear miscarriage of justice, and the refusal to hear one side is the same as if the case had not been heard at all: Re Holland, 37 U.C.R. 214; R. v. Washington, 46 U.C.R. 221; R. v. Sproule, 14 O.R. 375, 384.

But a justice's adjudication as to the reception or rejection of evidence is not open to review on a motion for mandamus: R. v. Yorkshire (Jus.), 53 L.T. 728; R. v. Connolly, 22 O.R. 220; nor upon a question of fact upon which he has adjudicated: R. v. Shiel, 49 J.P. 68; see Re Brighton Sewers Act, 9 Q.B.D. 723.

Mandamus will be granted to the General Sessions upon a point of practice or law, but not upon a matter of fact: R. v. Kestevan (Jus.), 3 Q.B. S11; R. v. Flintshire (Jus.), 11 Jur. 185.

Mandamus will be granted at any stage of the proceedings if the justice illegally declines to proceed: R. v. Brown, 7 E. & B. 757.

The application must be made promptly: R. v. West Riding (Jus.), 2 Q.B. 505,—twelve months being held to be too late: Cook v. Jones, 4 L.T. 306; but there is no specific time limited.

The court will not compel a justice to proceed with a criminal case arising out of a pending civil proceeding, except so far as is necessary to hold the party to bail; or unless the judge in the civil proceeding so orders: R. v. Ashburn, 8 C. & P. 50: R. v. Ingham, 14 Q.B. 396.

Costs.—The costs of the application are in the discretion of the judge, and are usually granted to the successful party: R. v. Surrey (Jus.), 14 Q.B. 684; R. v. Harding, 6 T.L.R. 53, 157; R. v. Lendon (Jus.), (1894) 1 Q.B. 453.

The order is applied for to a judge in chambers, and may be appealed from to the High Court. There is no ap eal to the Court of Appeal: see R. v. Cushing, 26 A.R. 248.

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A justice doing anything pursuant to a mandamus from the High Court is exempt from all liability therefor, even if what he does turns out to be really in excess of his jurisdiction, and he would otherwise have been liable: R.S.O. c. 88, ss. 2, 6, 23. A prerogative mandamus cannot be obtained by action, but only by motion: Kingston v. Kingston, 28 O.R. 399; 25 A.R. 462; following Smith v. Chorley (1897), 1 Q.B.

FORM OF NOTICE OF MOTION FOR MANDAMUS.

In the High Court of Justice.

In the matter of an information (or complaint) laid before E. F., by

A.B. against C.D.

Take notice that a motion will be made in behalf of the above named A. B. before the presiding Judge in Chambers at Cagoode Hall in the City of Toronto, on day, the day of A.D. 19, at the hour of o'clock in the forencon, or so soon thereafter as the motion can be made, for a mandamus requiring for example. "to hear and consider the allegations of the said complainmade out to issue a summons or warrant against the said C.D.") or for such A. B. before the proceeding required, and upon the said information and to determine whether a case has been such other order as may be proper.

And take notice that upon such motion will be read the affidavit of referred to.

, filed herein, and the exhibits therein

Dated this

day of

, A.D. 19

To the said C.D. (Signed)

igned) G.H., Solicitor for said A.B.

and to the said E.F.

APPIDAVIT FOR MANDAMES.

In the High Court of Justice

In the matter of, etc. (as in the above notice of motion.)

I, A. B. of the of in the County of in the County of

1. I am the above named prosecutor in the matter above mentioned.

information on oath before E. F., Esquire, a Justice of the Peace in and now shewn to me. marked exhibit "A?" to this my affidavit.

as That on the day of A.D. 19, the said matter came on to be heard at the said of before the said justice in the presence and hearing of the said C.D., and of examined in the presence and hearing of the said C.D. and myself, and in the presence and hearing of the said C.D. and myself, and the said matter having been duly heard, the said E.F. as such justice dismissed the charge and discharged the said C.D.

4. That immediately thereupon, and at the said time and place, I, as the prosecutor, verbally informed the said justice that I desired to prefer an required the said justice to bind me over to prefer and prosecute such an indictment before the Court at which the said C. D. would have been tried offered to enter into the recognizance required by section 595 of the Criminal Code of Canada.

5. The said justice answered my said request by saying that he would not bind me over or take any further step in the said matter (or otherwise setting out what the justice said, in answer to the request) and the said justice then and there refused and still refuses to accede to or comply with my said request, and to bind me over to prefer and prosecute an indistment as hereinbefore stated.

Sworn, etc.

The affidavit must show a demand and a refusal; and must state distinctly what was demanded; how the demand was made, and how answered; Re Bruce, 11 C.P. 575; Re Peck & Peterborough, 34 U.C.R. 129; Re Irving v. Askew, 28 L.T. 84; R. v. Pontypool 71 L.T. 17. But when the officer's affidavits in answer to the motion shewed that he had refused to act, and it appeared the demand if made would have been refused, this removed all objection to the want of proof of demand: Re Davidson & Miller, 24 U.C.R. 66.

ORDER FOR MANDAMUS.

In the High Court of Justice. the The Honourable Mr. Justice 19 In Chambers.

In the matter of, etc. (as in the above form of notice of motion.)

I'pon the application of the above named A.B. (or as the case may be), upon reading the notice of motion served herein that an order for a writ , requiring him to (here state of mandamus do issue, directed to the duty to be performed, or the thing to be done, as claimed or ordered), and the affidavit of service thereof, upon reading the affidavits of , and upon hearing the counsel (or solicitors) for the said A.B. and C.D. (as the case may be), and it appearing that (here insert necessary inducements and arerments), it is ordered that a writ of mandamus do issue out of this Court directed to the said returnable to this Court at Osgoode Hall, Toronto, forthwith after the service thereof, commanding the said that I the duty to be performed, or thing to be done, as ordered). that he do (here insert

Clerk in Chambers.

day of

WRIT OF MANDAMUS.

Edward the Seventh, of the United Kingdom of Great Britain and Ireland, King, Defender of the Faith.

, Greeting.

Whereas (here recite Act of Parliament if the act required to be done is founded on an Act of Parliment).

And whereas We have been given to understand and are informed, in our High Court of Justice, before Us, that (insert necessary induce-

ments and averments); And you, the said
were then required by (insert demand), but that you, the said
, well knowing the premises but not regarding your duty
in that behalf, then and there wholly neglected and refused to (insert refusai), nor have you or any of you at any time since contempt of Us, and to the great damage and grievance of 9.8

We have been informed from his complaint made to I's. Whereupon. We being willing that due and speedy justice should be done in the premises, as is reasonable, do command you, the said and every of you firmly enjoining you, that you (innert command), or that you shew Us cause to the contrary thereof, lest by your default the same complaint should be repeated to Us. And how you shall have executed this Our writ make known to Us in Our said Court, at Osgoode Hall, in the City of Toronto, forthwith then returning to Us Our said writ. And

Witness, etc.
To be indorsed. By order of the Court (or Mr. Justice At the instance of This writ was issued by

A return should be made to the mandamus shewing why the act required was not done, or that the mandamus has been complied with, and the return should be very minute: R. v. Southampton, 1 B. & S. 5. As to the sufficiency of the return: see R. v. Mainwaring, El. B. & E. 474; R 20 Q.B.D. 430.

RETURN TO WRIT OF MANDANUS.

The return may either be indursed on the back of the original writ, or engrossed on a separate schedule.

When indorsed on the back of the original writ.

The answer of one of His Majesty's Justices of the Peace (or police magistrate, as the case may be) for the to this writ.

one of His Majesty's Justices of the Peaco (or police magistrate) for the magistrate) for the of to whom this writ is directed do most humbly certify and return to our Sovereign Lord the King, at the time and place in this writ mentioned, that I have (when the return is in obedience to the writ, the words in the mandatory part of the writ should be recapitulated in the past instead of the future tense). As by

[Seal.]

Justice of the Peace (or Police Magistrate'.

When the return is on a separate schedule indorse on the original writ or copy served as follows: The return of

one of etc. (as above) to this writ (or if the return is in obedience to the writ say, the execution of this writ) appears The answer of

[Seal.]

Justice of the Peace (or Police Magistrate.)

CHAPTER V.

APPEAL AND CAP STATED.

The Right of Appeal in any form exists only when it is given by statute, either expressly or by necessary implication and the procedure to be employed must be distinctly laid down: see R. v. London Jus., 24 Q.B.D. 360; Superior v. Mcntreal, 3 Can. Cr. Cas. 379.

Provisions of Criminal Code .-- Part 58 of the Criminal Code provides for appeals, by sections 879 et seq., and for case

stated, by sections 900 et seq.

These provisions are limited in their application to prosecutions before justices or magistraces or other judicial functionaries when acting in their summary jurisdiction under Part 58 of the Criminal Code, in regard to offences and matters under Dominion laws: Code 840 (a), (b); and they do not apply to appeals from convictions on summary trials before magistrates under Part 55: see Code 808.

The latter appeal lies only by way of case stated under s. 742 et seq.: Code 808; R. v. Racine, 3 Can. Cr. Cas. 446; R. v. Egan, 11 Man. R. 124; 1 Can. Cr. Cas. 112; R. v. Boguie,

3 Can. Cr. Cas. 492.

Code 782, as amended by 58-59 Vict., c. 40, gives anthority to two justices sitting together to try summarily the offences mentioned in Code 783 (a) and (f); and in such cases, in appeal lies in the same way as an appeal from a summary conviction by a single justice, under part 58. And such appeal lies from two justices (or a magistrate in British Columbia, Prince Edward Island, and the North-West Territories) on a summary conviction for theft under the value of \$10, notwithstanding Code 784 as amended by the Criminal Code Amendment Act, 900 (c. 46), makes their jurisdiction absolute: R. v. Wirth, 5 B.C.R. 114.

The provisions of the Criminal Code as to appeals do not apply to penal cases which arise from and are governed exclusively by provincial legislation: Superior v. Montreal,

3 Can. Cr. Cas. 379, at p. 382.

1. APPEALS AND CASES RESERVED UNDER DOMINION LAWS.

(A.) Appeal from Summary Convictions under Part
58 of the Criminal Code.

In Ontario.—Unless it is otherwise provided in any special Act under which a conviction takes place, or an order is made by a justice for the payment of money, or dismissing an information or complaint, any person who thinks himself aggrieved by such conviction or order, the prosecutor or complainant, as well as the defendant, may appeal in Ontario to the General Sessions, at the place where the cause of the information arose, or the nearest place thereto, where a court is appointed to be held: Code, 879.

In Other Provinces.—In Quebec the appeal is to be made to the Court of Queen's Bench, crown side; in Nova Scotia, New Brunswick, and Manitoba to the County Court of the district or county where the cause of the information arose; in Prince Edward Island, to the Supreme Court; in British Columbia, to the County or District Court at the sitting nearest to the place where the cause of the information arose; and in the North-West Territories to a judge of the Supreme Court of the Territories, sitting without a jury; Code 879. See Code 839 (a), (d) for interpretation of the terms, "justice," and "district" or "county."

The proceedings on such appeal are provided by Code 880, et seq.

Notice of Appeal.—The applicant is to give notice of appeal in writing to the respondent, or to the justice "for him," in the form N.N.N. to the Criminal Code, within ten days after the conviction or order: Code 880 (b).

N.N.N. Code 880.

NOTICE OF APPEAL AGAINST A CONVICTION OR ORDER.

To C. D., of , (the name and addition of the prosecutor; or in case the justice is served for the prosecutor, as is permitted by the above section, add the following: "and to J. S., Esquire, the Justice of the Peace in and for the County of Huron, who tried the case hereinafter mentioned, and to whom this notice is given for the prosecutor").

Take notice, that I, the undersigned A. B. of intend to enter and prosecute an Appeal at the next General Sessions of the Peace (or other Court, as the case may be) to be holden at , in and for the day of , instant, and made by (you) J. S., whereby I, the said A. B., was convicted of having (or was ordered) to

pay , (here state the offence as in the conviction, or the amount adjudged to be paid, as in the order, as correctly as possible).

Dated at , this day of , one thousand nine hundred and

Requisites of Notice.—It was held in Canadian S.P.C.A. v. Lauzon, 5 Rev. de Jur. 259, that the omission of the words "for the respondent" from the notice, if it was served on the justice and not on the respondent, was fatal: but see contra, Ex p. Doherty, 25 N.B.R. 38; and it was also held that a notice addressed to the justice alone and not to the respondent is not sufficient: Keohan v. Cook, N.W.T.R. 54; and in Canadian S.P.C.A. v. Lauzon, supra, it was held that if the prosecution was taken by an agent of the Society the appeal should be taken by the agent himself and not by the Society.

The statute does not expressly require the notice to be signed by any person, but the form indicates that it is to be signed by the appellant. Code 982 provides that the forms given, or "forms to the like effect," are sufficient, and a substantial compliance with the form is enough: see Gemmell v. Garland, 12 O.R. p. 142; Jones v. Grace, 17 O.R. 681; Truax v. Dickson, 17 O.R. 375; Northcote v. Brunker, 14 A.R. 364; Ex p. Stamford, 17 Q.B.D. 259. A notice signed on the appellant's behalf, by his solicitor, is a sufficient compliance with the statute: see R. v. Nichol, 40 U.C.R. 76; R. v. Kent (Jus.), L.R. 8 Q.B. 305.

Service of Notice.—Personal service of the notice of appeal is not required in express terms by the Act, and where not so required personal service is not imperatively demanded in any case unless the purpose is to charge the party with contempt for not performing some act required by the document served: Ward v. Vance, 9 C.L.J. 214; 3 P.R. 130.

Service by leaving the notice at the place of residence with some grown up person residing there is sufficient: see R. v. N.R. of Yorkshire (Jus.), 7 Q.B. 154. See the exhaustive collection of cases on the subject of service under similar statutory provisions in Bicknell & Seager's D.C. Act, 198.

When Notice to be Served.—The ten days within which the notice must be served under Code 880 (b), are computed from the day on which the justice announced his decision and made the minute of adjudication required by Code 859, and not from the time of making out the formal record of con-

viction which may be done afterwards, (see the same section), and which may be transmitted to the court appealed to at any time before the appeal is to be heard: Code 888: See R. v. Derbyshire (Jus.), 7 Q.B. 193; Ex p. Johnson, 3 B. & S. 947. The time for appealing from a judgment begins to run when the decree or order for judgment is put into intelligible shape, so that the parties may clearly understand what they have to appeal from (such as the minute of adjudication must be, see post, "Summary Convictions,") and not from the entry of formal judgment: Koksilah Quarry Co. v. The Queen, 5 B.C.R. 600.

The day next following that on which the decision was announced will be the first day counted; and the day of serving the notice will be excluded: Radcliffe v. Bartholomew, (1892) I Q.B. 161. If the last day for service falls on a holiday the notice may be served on the next following day which is not a holiday: R.S.C. c. 1, s. 7 (27).

To What Sitting.—If the conviction or order is made more than fourteen days before the sitting of the court to which the appeal is given, it is to be to the then next sitting of that court; but if less than fourteen days, then to the second sitting after such conviction or order: ('ode 880 (a).

Fourteen clear days is meant, so that an appeal from a conviction made on or before, say, 28th May, would have to be to the sitting beginning on, say, 12th June; but if the conviction was after the 28th May, and the next sitting began on 12th June, the appeal must be to the second sitting, e.g. in Ontario to the December general sessions.

The general sessions in Ontario are held on the second Tuesday in June and December, R.S.O. c. 56, s. 4: except in the County of York, where they are held on the first Tuesday in March and December, and the second Tuesday in May and September: s. 4 (2).

Recognizance.—If the appeal is from a conviction adjudging imprisonment for the offence, the appellant must either "remain in custody until the holding of the court to which the appeal is given," or enter into a recognizance before any justice with two sufficient sureties conditioned personally to appear at the court and try the appeal, and abide by the judgment on appeal, and pay such costs as may be awarded by the court: Code 880 (c).

If the appeal is from a conviction or order awarding only a penalty or sum of money to be paid, the appellant (although the order directs imprisonment in default of payment), may, instead of remaining in custody, or giving the recognizance above mentioned, deposit with the justice such sum as the latter thinks sufficient to cover the penalty, and the costs of the conviction or order, and the costs of the appeal; and upon giving such recognizance, or making such deposit, the appellant, if in custody, is to be liberated by the justice: Code 880 (c).

The costs usually taxed on an appeal amount to about \$30, besides witness fees, and the justice in fixing the amount of the recognizance or deposit is to include these costs and the probable witness fees.

Form O.O.O., Code 880 (c).

FORM OF RECOGNIZANCE ON APPEAL.

Canada.
Province of
County of

A.D. 19 Be it remembered that on the day of , in the County of (occupation), of. A.B. of the , in the County of of and C.D. of the in the county of (occupation), and E.F. of the of (occupation), personally came before the undersigned, G.H., a Justice and severally of the Peace in and for the said County of acknowledged themselves to owe to our Sovereign the King the several sums following, that is to say, the said A.B. the sum of the said C.D. the sum of , and the said I , and the said E.F. the sum of each (the amount filled in should be double the amount of any money penalty, and the costs awarded by the conviction and the probable costs of the appeal), of good and lawful money of Canada to be levied on their several goods and chattels, lands and tenements respectively, to the use of our said Sovereign the King, his heirs and successors, if the said A.B. fails in the condition hereunder written.

Taken and acknowledged the day and year first above mentioned at the of , in the County of , before me.

(Signed) G. H., J.P., County of

The condition of the above written recognizance is such that if the said A.B. personally appears at the (next) General Sessions of the Peace (if in Ontario; or if in another province name the Court to which the appeal is made according to Code 879) to be holden at the of , in the County of , on the day of A.D. 19 , in and for the said County of , and tries an appeal against a certain conviction bearing date the day of A.D., 19 , and made by me, the said Justice (or by a Justice of the Peace for the County of , as the case may be) whereby he, the said A.B., was convicted for that (set out the offence as stated in the conviction) and also abides by the judgment of the Court

upon such appeal, and pays such costs as are by the Court awarded, then the said recognizance to be void, otherwise to remain in full force and virtue.

(Signed) G. H., J.P.

Notice of the recognizance in the form appended to Form O.O.O. in the Criminal Code should be given by the justice to the parties bound by the recognizance. The omission to do so, however, will in no way affect the appeal; the notice, being merely a matter of procedure, is directory to the magistrate, and does not affect the proceeding.

In case of an appeal by a corporation, it was said in the case of Southern Co. Bank v. Boaler, 11 T.L.R. 568, that it is the practice to accept the recognizance of some member of the corporation—usually a director: and see R. v. Manchester (Jus.), 7 E. & B. 453.

The sureties must be sufficient (see Code 880 (c)), and they may be required to justify either by affidavit (see Form ante, p. 9) or by being sworn and examined before the justice as to their property, etc., and if the recognizance is sufficient, the justice has no authority to refuse to act upon it, on the ground of the insufficiency of the notice of appeal: R. v. Carter, 24 L.J.M.C. 72.

Transmission of Conviction to Court.—The justice is required to transmit the conviction or order appealed from, with the deposit, if any, to the court to which an appeal is given (in Ontario to the Clerk of the Peace), before the time the appeal is to be heard, there to be kept among the records of the court: Code 888.

In Re Ryer & Plows, 46 U.C.R. 206, it was held that the conviction might be received and proved before the court appealed to at any time, or, in the discretion of the chairman, even pending an adjournment for judgment by him. But where he had in his discretion refused to receive it and to act on a minute of adjudication not under seal, previously returned, the court refused to issue mandamus as it was a matter in the discretion of the chairman of the sessions which could not be reviewed.

Hearing the Appeal.—On the trial before the court appealed to there is no right to a jury: see 37 C.L.J. p. 10. On this point see R. v. Washington, 46 U.C.R. 221.

On an appeal to the General Sessions, under Code 879 et seq., it is competent for a judge of the High Court of Justice

for Ontario or of a County Court to order that a subpæna be issued under the provisions of Code 584, 689 and 843, to witnesses in another province to compel their attendance to give evidence on the appeal: R. v. Gillespie, 16 P. R. 155; and by s.-s. 2 added to s. 679 by the Criminal Code Amendment Act, 1900, c. 46, the courts of the various provinces and the judges thereof are to be auxiliary to each other for the purposes of the Criminal Code, and any judgment, decree or order made by the court issuing a subpena against a witness for contempt of court, or otherwise, may be enforced or acted upon by any court in the province in which the witness resides, in the same manner and as validly as if such judgment, etc., had been made by such last mentioned court: see notes to this section in 3 Can. Cr. Cas. 581.

When the appeal has been lodged in due form in compliance with the requirements of the statute, the court appealed to is required to try, and is to be the absolute judge as well of the facts as of the law, in respect to the conviction or decision: Code 881.

Any of the parties may call witnesses and adduce evidence either as to credibility of witnesses or any other material fact, whether such witnesses were called or evidence was adduced at the hearing before the justice or not: Code 881; see R. v. Washington, 46 U.C.R. 221; and any evidence taken before the justice at the hearing, signed by the witness and certified by the justice, may be read on the appeal, and shall have the same effect as if the witness was there examined, provided the court is satisfied by affidavit or otherwise, that the personal attendance of the witness cannot be obtained by any reasonable efforts: Code 881. As to what efforts will be held to have been reasonable, depends upon the circumstances of each particular case: see Tomlinson v. Goatley, L.R. 1 C.P. 231; Re Turner (1697), 1 Ch. 536; Re Kay (1897), 2 Ch. at p. 519; Perrins v. Bellamy (1899), 1 Ch. 800.

FORM OF AFFIDAVIT TO LET IN DEPOSITIONS AS EVIDENCE ON APPEAL UNDER CODE 881.

In the Court of General Sessions of the Peace for the County of

In the matter of

I of the of in the County of

(occupation), make oath and say:

1. That on the day of A.D. 19, I was directed on behalf of (the prosecutor or defendant) to serve a subpara or

summons then delivered to me for that purpose upon one, the of in the County of (occupation), who was one of the witnesses, and who gave evidence at the hearing of the said charge before to obtain the personal attendance of the said as a witness at the present sitting of this Court on the hearing of the appeal herein now pending in said Court.

2. That on the day of , A.D. 19 , I accordingly, called at the place of residence of the said , at the said for the purpose of serving him with the said subposen and enquiring there for the said , I was informed by the wife of the said (or as the case may be, shewing the person to be a grown up

resident of the place mentioned), who informed me that the said was not then at home. I then stated to the said wife of the said (or other person spoken to) the nature of my business.

(or other person spoken to) the nature of my business, and told her (or him) that I would call again for the purpose of serving the said subpoens at (naming the day and hour at which the call was to be made), and that I accordingly (Here state whatever calls were made and other attempts to effec service, and if the witness hus a place of business, show what efforts were mad. .o serve him there; also, state what the persons seen at the witness' residence and place of business said in reply to the questions asked about the witness, giving the questions and answers. If the witness has gone abroad, shew if possible where he is alleged to have gone to, and state such facts and circumstances as would satisfy the Court that all reasonable efforts have been made to obtain the personal attendance of the witness to give evidence. What the officer said; and the answers to his questions should be distinctly stated: Dubois v. Lowther, 4 C.B. 228; Fisher v Goodwin, 2 C. & J. 94; Tomlinson v. Goatley, L.R. 1 C.P. 230).

3. That I have made all reasonable efforts and used all due means in my power to serve the said with the said subpœna, and to procure his personal attendance at the hearing of the said appeal, and I have not been able to do so.

Sworn, etc.

As to what will be deemed reasonable efforts see, R. v. Wilson, 1 O.R. 500; Tomlinson v. Goatley, L.R. 1 C.P. 236; Stroud's Dic. 653; Re Hibbitt and Schilbroth, 18 O.R. 399; Channington v. Willoughby, 23 Sol. J. 230.

If the personal attendance of the witness cannot be obtained in consequence of his illness or death this should be proved: see post "Evidence." The inability of the witness to attend must be proved by a witness who knows the fact otherwise than by hearsay: Robinson v. Maskes, 2 M. & Rob. 375. Sickness must be such as to preclude the hope of the witness attending the trial within a reasonable time: Beaufort v. Crawshay, L.R. 1 C.P. 699; Davis v. Lowndes. 7 Dowl. 101.

A similar form to the above may be used on an appeal from a conviction under an Ontario law, the proof required being that witness is "dead, or so ill as not to be able to attend and give evidence, or is absent from Ontario," or after diligent inquiry cannot be found to be subposed: R.S.O. c. 90, s. 10.

On an appeal to the general sessions a judge of the High Court or County Court may issue a subpensa to a witness in another province under Code 879, 881: R. v. Gillespie, 16 P.R. 155.

No objection is to be allowed to any information or process for any defect therein in substance or in form, or for any variance between the information or process and the evidence adduced at the hearing before the justice, unless it is proved before the court hearing the appeal that such objection was taken before the justice, and that notwithstanding it was shewn to the justice that by such variance the defendant was deceived or misled, the justice refused to adjourn the case to some further day: Code 882.

It was held under the Summary Convictions Act of British Columbia, which contains similar provisions to Code 882, that the objection that a by-law under which the defendant was convicted was ultra vires, could not be taken on appeal, if the defendant pleaded guilty and did not raise the objection before the justice; even if he was not then aware of the invalidity of the by-law: R. v. Bowman, 2 Can. Cr. Cas. 89; see Rogers v. Cavanagh, 27 C.P. 537; and see R. v. Poirier, 19 C.L.T. 378. And on an appeal from a conviction upon a plea of guilty the case will not be re-opened to revise the punishment imposed, if the justice has not acted oppressively: R. v. Bowman, supra.

The court has authority to adjourn the hearing of the appeal from one sittings to another or others of the court: Code 880 (f).

Upon the hearing of the appeal, it is for the appellant to prove that the appeal has been properly brought, by proof of the notice and recognizance. The conviction or order is presumed not to have been appealed against until the contrary is shewn: Code 888.

It is, then, for the respondent to begin, and to produce evidence to sustain the charge against the accused; and unless he does so the court must quash the conviction: Whiffin v. Bligh, 56 J.P. 375.

The court appealed to is to hear ar 1 determine the appeal and make such order, with or without costs to either party,

including the costs in the justice's court, as to the court seems meet: Code 880 (e).

This includes solicitor's and counsel fees and witness fees: R. v. McIntosh, 28 O.R. 603. If the appeal was by the defendant and it is dismissed, and the conviction or order is affirmed, the court must order and adjudge the appellant to be punished according to the justice's conviction, or to pay the amount adjudged by the justice's order, and to pay such costs as the court may award: Code 880 (c).

It was held in R. v. Surrey (Jus.), (1892) 2 Q.B. 721, that the court has no jurisdiction to modify the punishment awarded by the justice. This was under similar provisions to sections 880 (e), 883 of the Cr. Code, the provision in the latter, which would seem to empower the court to "modify the decision of the justice" or "make such other conviction or order in the matter as the court thinks just," and exercise any power which the justice might have exercised, applies only when the justice's conviction is invalid or the punishment imposed, or the order made, was in excess of the justice's jurisdiction. Otherwise the measure of punishment is for the justice and not for the court appealed to.

The court may order the money adjudged, with the costs of the appeal and the costs of the conviction or order, to be paid out of the money, if any, deposited on the appeal, and that any residue be repaid to the appellant: Code 870 (e).

The court has no authority to refuse to so apply the money deposited; the word "may" imports a duty which must be performed at the request of the party entitled to require it. The power to do an act which the rights of an interested party demands is imperative and not discretionary: Fenson v. New Westminister (B.C.), 2 Can. Cr. Cas. 52; R. v. Bishop of Oxford, 4 Q.B.D. 525; 5 A.C. 214, 225; Camerom v. Wait, 3 A.R. p. 194, and see chapter on "Mandamus," ante p. 60.

In either result of the appeal the court may, if necessary, issue its own process for enforcing its judgment against either party according to the result: Code 880 (e); or if the appeal against a conviction or order is decided in favour of the respondent, the justice who made the conviction or order, or any other justice for the same "territorial division," (for definition see Code 839 (c)), may issue the warrant of distress or commitment as if no appeal had been brought: Code 885.

If the conviction or order is quashed on the appeal, the deposit is to be ordered to be repaid to the appellant: Code 880 (e), and the clerk of the peace or other officer of the court appealed to is to forthwith endorse on the conviction or order a memorandum to that effect: Code 880 (g).

By Code 883 the court, notwithstanding any defect in the conviction or order, or that the punishment was in excess of the justice's jurisdiction is, on the appeal; to hear and determine the charge or complaint upon the merits, and may confirm, revise or modify the justice's decision, or make such other conviction or order as the court thinks just; and may by its order exercise any power which the justice might have exercised, and any such conviction or order shall have the same effect, and be enforced in the same manner, as if it had been made by the justice; and any conviction or order made by the court on appeal, may also be enforced by process of the court itself: Code 883 (2).

Abandonment of Appeal.—The appellant may at any time abandon the appeal, by giving to the opposite party six clear days' notice in writing before the sitting of the court appealed to: Code 899. The six days are to be reckoned exclusively of both first and last days: R. v. Aberdare, 14 Q.B. 854; Re Sams and Toronto, 9 U.C.R. 181.

FORM OF NOTICE OF ABANDONMENT OF APPEAL.

In the Court of General Sessions of the Peace for the County

In the matter of an information (or complaint) laid before, Esquire, a Justice of the Peace in and for the County, by A.B. against C.D. for that (set out the charge).

Take notice that I do hereby abandon my appeal to this Court against the conviction of me, the said C.D., for the alleged offence above mentioned. , A.D. 19 .

day of Dated this

C.D.; by E.F., his Solicitor.

This notice must be served six clear days before the first day of the general sessions, the six days to be exclusive of the day of giving the notice and the first day of the session: Code 899.

A similar notice may be given on abandonment of an appeal under an Ontorio law: R.S.O. c. 90, s. 11.

Costs.—Upon this notice being given, the justice is to add the costs of the appeal so far incurred to the amount already adjudged against the appellant, if any, and proceed on the conviction or order as if there had been no appeal, viz., by warrant of distress or commitment, or both if necessary, inserting a clause in the warrants adding the costs of appeal: Code 899.

The costs of the appeal to be so added, include solicitor's costs and counsel fees, if any, if the appeal was from a conviction under the Cr. Code or any other Dominion statute, even if no provision is specially made by such statute for the payment of such costs: see Code 880(e), 883; R. v. MacIntosh, 28 O.R. 603; Code 897.

Code 880, as to costs and application of the deposit in payment of same, applies to all appeals under Dominion laws: R. v. MacIntosh, 28 O.R. 603.

The costs of appeal on a conviction being sustained or quashed, as the case may be, should be fixed by the judge on the hearing, and cannot be referred to the clerk of the court, as no authority is given to the latter; but the judge may, before issuing the order, direct the costs to be taxed by the clerk of the court, for the former's guidance in fixing the amount to be inserted in the order: R. v. MacIntosh, supra. On quashing a conviction the judge should include the amount of costs in the formal order. An order referring the costs to the clerk of the peace for taxation was quashed, in Re Bothwell v. Burnside, 31 O.R. 695.

If, after giving notice of appeal, the appellant neither serves notice of its abandonment, under Code 899, nor enters the appeal for hearing; or if he does not appear at the hearing, the court may, at the sittings for which notice of appeal was given, order the appellant to pay the respondent's costs (Code 884) although the notice of appeal was invalid or irregular (Dominion Statute 57-58 Vict., c. 57), and they may be recovered in the same way as costs on the hearing of an appeal are recoverable (Code 884), that is, as provided by Code 880 (e) or 883 (2).

If, upon any appeal, the court trying it, orders either party to pay costs, the order is to direct the costs to be paid to the clerk of the peace or other officer of the court appealed to, to be paid over by him to the person entitled to the same, and the order is to state within what time the costs are to be paid: Code 897: If the costs are not paid within the time limited, and the person ordered to pay the same has not been

bound by recognizance to pay the costs, the clerk of the peace is to so certify:—Form P.P.P. to the Cr. Code;—on application of the person entitled to the costs and on payment of the officer's fee; and on production of the certificates to any justice of the county, he may enforce payment of such costs by warrant of distress: Form Q.Q.Q. to the Cr. Code: and in default of distress, by warrant of commitment: Form R.R.R. to the Cr. Code; for not more than one month, unless the same and the costs of distress and commitment and of conveying the party to prison, (if the convicting justice so orders), are sooner paid: Code 898. The amount of these costs is to be stated in the commitment.

Where an appeal to the sessions is dismissed, without being heard on the merits, there is no power to impose costs: Re Madden, 31 U.C.R. 333, followed in R. v. Becker, 20 O.R. 676.

FORM OF CERTIFICATE UNDER CODE, 898.

Office of the Clerk of the Peace for the County of

I hereby certify that at a Court of General Messions of the Peace (or, the name of any other Court to which the appeal was made, as the case may be), holden at , in and for the said county, on last past; an appeal by A. B. against a conviction (or order) of J. S., Esquire, a Justice of the Peace in and for the said county, came on to be tried, and was there heard and determined, and the said Court of General Sessions (or other Court, as the case may be) thereupon ordered that the said conviction (or order) should be confirmed (or quashed), and that the said (appellant) should pay to the said (respondent) the sum was for his costs incurred by him in the said appeal, and which sum was thereby ordered to be paid to the Clerk of the Peace for the said county, on or before the day of (instant), to be by him handed over to the said (respondent), and I further certify that the said sum for costs has not, nor has any part thereof, been paid in obedience to the

said order.

Dated at , this day of , one thousand nine hundred and

G. H., Clerk of the Peace.

Q.Q.Q.-(Section 898.)

WARRANT OF DISTRESS FOR COSTS OF AN APPEAL AGAINST & CONVICTION OR ORDER.

Canada,
Province of ,
County of .

To all or any of the constables and other peace officers in the said

whereas A.B. of the of in the county of (ocmpation) was on the day of A.D. 19, duly convicted before, a Justice of the Peace in and for the County of , for that (set out the offence as stated in the conviction) [or if the appeal was from an order for the payment of money the following will be substituted for the above recital—see Form E.E.E. to the Cr. Code:—'Whereas on the day of , A.D. 19, a complaint was

made before , a Justice of the Peace in and for the said county, for that (set out the matter complained of an in the order), and thereupon the matter of the said complaint having been considered, the said A.B. was adjudged to pay the said C.D. the sum of the day of , A.D. 19 , an C.D. the sum of for his costs in the the day of , A.D. 19 , and also to paj 3 the said ('.D. the sum of for his costs in that be said A.B. appealed to the Court of General Sessions of the Peace (or other Court discharging the functions of the Court of General Sessions, the case man he) for the content of the court discharging the functions of the Court of General Sessions, as the case may be), for the said county, against the said conviction or order, in which appeal the said A.B. was the appellant, and the said C.D. (or J.S., Esquire, the Justice of the Peace who made the said conviction or order) was the respondent, and which said appeal came on to be tried and was heard and determined at the last General Sessions of the Peace (or other Court, as the case may be) for the said county, holden ; and the said court thereupon ordered that the said conviction (or order) should be confirmed (or quashed) and that the said (appellant) should pay; to the said (respondent) the sum of , for his costs incurred by him in the said appeal, which said sum was to be paid to the Clerk of the Peace for the said county, on or before the day of , one thousand nine hundred and , to be by him handed over to the said C.D.; and whereas the ('lerk of the Peace of the said county has, on the day of (instant), duly certified that the said sum for costs had not been paid: These are, therefore, to command you, in His Majesty's name, forthwith to make distress of the goods and chattels of the said A.B., and if, within the term of days next after the making of such distress, the said last mentioned sum, together with the reasonable charges of taking and keeping the said distress, are not paid, then to sell the said goods and chattels so by you distrained, and to pay the money arising from such sale to the Clerk of the Peace for the said county of that he may pay and apply the same as by law directed; and if no such distress can be found, then to certify the same unto me or any other Justice of the Peace for the same county, that such proceedings may be had therein as to law appertain.

Given under my hand and seal this day of the year , at , in the county aforesaid.

O.K., [seal.]
J.P., (Name of county).

CONSTABLE'S RETURN TO A WARRANT OF DISTRESS.

I, J.K., Constable, of the County of hereby certify to Esquire, a Justice of have made diligent search for the goods and chattels of the within named A.B. and that I can find no sufficient goods or chattels of the said A.B. whereon to levy the sums mentioned in the within warrant.

Witness my hand, this

day of

, A.D. 19

(Signed)

J.K.,

6-8.

Constable.

R.R.R.-(Section 69%.)

WARRANT OF COMMITMENT FOR WANT OF DISTRESS IN THE LAST CASE.

Canada,
L'revince of .

To all or any of the constables and other peace officers in the said

Whereas (etc., as in form Q.Q.Q. to the asterisk and then thus): And day of the pear aforesaid, I, the undersigned, issued a warrant to all or any of the Peare (officers in the said county of them, to levy the said sum of them, to levy the said sum of them to levy the said and the said warrant of distress of the Peace Officer who was charged with the execution of the same, as otherwise, that the said Peace Officer has made diligent search for the goods and chattels of the said A.B., but that no sufficient distress whereon to levy the said the said A.B., but that no sufficient distress whereon to levy the said sum above mentioned could be found: These are, therefore, to command you, the said Peace Officers, or any one of you, to take the said A.B., and him safely to convey to the common gaol of the said county of at aforesaid, and there deliver him to the said seeper thereof, together with this precept: And I do hereby command you, the said keeper of the said common gaol, to receive the said A.B. into your custody in the said common gaol, there to imprison him (and here him at head labour) for the term of

seeper thereof, together with this precept: And I do hereby continued by you, the said keeper of the said common gaol, to receive the said A.B. into your custody in the said common gaol, there to imprison him (and keep him at hard labour) for the term of the said sum and all costs and charges of the said distress (and for the commitment and conveying of the said A.B. to the said common gaol amounting to the further sum of the said A.B. to the said common gaol amounting to the further sum of the said keeper; and for so doing this shail be your sufficient warrant.

Given under my hand and seal this day of A.D. 19 , at the of in the County aforesaid.

(Signed)
E.H.,
J.P., County of

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By Code 900 (14), any person who appeals by way of case stated, under that section, shall be taken to have abandoned his right to appeal under Code 879, finally and conclusively.

Appeal from Order for Restoration of hined Metals.—
The provisions of part 58 of the Criminal Code (ss. 879 et seq) relating to appeals from summary convictions by justices, are, by Code 571 (2), made applicable to an order made by a justice under Code 571 for the restoration of mined metals.

On such an appeal the appellant is to give security by recognizance to the value of the property, to prosecute his appeal at the "next" sittings of the court, and to pay such costs as are awarded against him: Code 880 (d).

Case stated by Judge or General Sessions.—By Code 742 an appeal lies to the "Court of Appeal" (defined by Code 3 (c), as amended by the Criminal Code Amendment Act, 1900, c. 46, to mean the various appellate courts, there named, in the several provinces), from the "verdict or judgment of any court or judge having jurisdiction in criminal cases. So the general sessions in Ontario and the courts in the other provinces, to which an appeal from a justice may be taken, may, on deciding such appeal, reserve and state a case under Code 742.

The proceedings will be the same as in cases reserved by magistrates under the same section, as to which see pust page 95; and an appeal lies, from the decision of the "Court of Appeal" to the Supreme Court of Canada, under the same conditions as those appurtaining to decisions of the "Court of Appeal," in cases reserved by magistrates: see pust page 97.

(B). Case stated by a Justice for Review on Nummary Proceedings under Part 58 of the Criminal Code.

Any person aggrieved, the prosecutor or complainant, as well as the defendant, who desires to question a convection, order, determination, or other proceeding of a justice under Part 58 of the Cr. Code, on the ground that it is erroneous in point of law, or is in excess of jurisdiction, may apply to such justice to state and sign a case, setting forth the facts of the case and the grounds on which the proceeding is questioned, and if the justice declines to state the case, may apply to "the court" for an order requiring a case to be stated: Code 900 (2).

Interpretation.—The term "the court" in this section is defined by its first paragraph to mean and include, "any superior court of criminal jurisdiction for the province in which the proceedings referred to in Code 900 are carried on"; and the expression, "Superior Court of Criminal Jurisdiction," is interpreted by Code 3, s.-s. (g), as, being, in Ontario, the High Court of Justice for Ontario; in Quebec, the Court of Queen's Bench; in Nova Scotia, New Brunswick and British Columbia, and the North-West Territories, the Supreme Court; in Prince Edward Island, the Supreme Court; and in Manitoba the Court of Queen's Bench (Crown side).

The right of appeal, under Code 879, is barred by a proceeding by way of case stated: Code 900 (14); see ante p. 82.

When the right of appeal is taken away by any special Act, there can be no appeal by case stated: Code 900 (15).

When Application to be Made. — Application to the justice to state a case shall be made within such time and in such manner as is from time to time directed by rules or orders to be made under Code 533: Code 900 (3). No rules or orders have yet been passed under this provision, and there is no other provision limiting the time within which the application must be made.

The application for the case, need not be made in writing: see R. v. Bridge, 24 Q.B.D. 609. If more than one justice sits on the case application must be made to all of them: Westmore v. Payne (1891), 1 Q.B. 482; and the minority of such

justices have no power to state a case: ib.

The Application to the Justice.—If the justice is of opinion that the application is merely frivolous, but not otherwise, he may refuse to state a case; and shall, on the request of the applicant, sign and deliver to him a certificate of such refusal; provided that the justice shall not refuse to state a case where the application is made to him by or on behalf of the Attorney-General of Canada, or of any province: Code 900 (5).

FORM OF CERTIFICATE OF REFUEAL TO STATE A CASE UNDER CODE 900.

I, , a justice of the peace in and for the county of do certify at the request of C. D., who was on the day of A.D. 19, summarily convicted before me on the information of A. B. for (state the charge) that after the said conviction was made, namely, on the day of A.D. 19, the said C. D. desiring to question the said conviction on the ground that it is erroneous in point of law in that (state the ground of objection), or that the same is in excess of my jurisdiction as such justice (or as the case may be), applied to me as such justice to state and sign a case setting forth the facts of the case and the grounds on which the said conviction is questioned. And I further certify that the said application being in my opinion merely frivolous (or if the question raised is one of fact and not upon a point of law or jurisdiction so state: see R. v. Bridge, if J.P. 629.) I did thereupon refuse to state a case thereon; and this certificate thereof is signed and delivered by me to the said C. D. at his request pursuant to section 900, sub-section 5, of the Criminal Code of Canada.

(liven under my hand at the of in the county of this day of A.D. 19 .

The justice of the peace above named.

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For form of certificate of refusal on other grounds than that it was frivolous, e.g. that it was not on a point of law or jurisdiction, etc., see 52 J.P. 235; R. v. Bridge, 54 J.P. 629. The certificate after shewing the grounds of jurisdiction of the justice should recite shortly the matter of the information, that the applicant was dissatisfied with the decision arrived at, as being erroneous in point of law, or that the jurisdiction of the justice was objected to, that the application was made for a case stated, and the justice should certify that the the application was merely frivolous, or that it was not on a point of law or jurisdiction, and the certificate is to be signed by the justice.

Upon What Points a Case May be Stated.—The question to be decided must be one which strictly arises on the trial: R. v. Gibson, 16 O.R. 704: R. v. Barnett, 17 O.R. 649: and not one arising before the trial; R. v. Murray, 1 Can. Cr. Cas. at p. 456; Moran v. The Queen, 18 S.C.R. 407: R. v. Faderman, 1 Den. C.C. 565: Brisbois v. The Queen, 15 S.C.R. 421. A case cannot be stated, if it is in the opinion of the justice merely frivolous: Code 900 (5): R. v. Bridge, 54 J.P. 629; Ex p. Hawke, 10 T.L.R. 677: nor, upon a question of fact, but only upon a question of law, or whether the justice's decision is in excess of jurisdiction: Code 900 (2): R. v. Hobbs v. Dance, L.R. 9 C.P. 30; R. v. Yeomans, 24 J.P. 149: R. v. Pollard, 14 L.T. 599: Sweatman v. Guest, L.R. 3 Q.B.

A question depending purely on the weight of evidence such as the question, whether the failure of a husband to provide necessaries for his wife would be likely to permanently injure her health, cannot be made the subject of a case stated: R. v. McIntyre, 31 N.S.R. 422, 3 Can. Cr. Cas. 413; see R. v. Bowman, (N.S.) 3 Can. Cr. Cas. 410; R. v. Robinson (Ont.), 1 Can. Cr. Cas. 28.

Questions of Law.—A case should not be granted unless some doubtful point of law has been raised, fit to be submitted to the court, and the court has no authority to say anything but whether the justice did right or wrong in the particular case, and answer the question submitted. See St. Botolph v. Whitechapel, 2 L.T. 507, per Blackburn, J. The question, whether there is sufficient evidence to support a

criminal charge, is a question of fact, but a question, whether there is any evidence, is one of law: R. v. Lloyd, 19 O.R. 352: Green v. Pensance, 22 J.P. 727. A case may be stated upon the question, whether the facts stated warrant the finding: R. v. Pilkington, 13 L.J.M.C. 64. A question may be stated as to the meaning of a statute: R. v. Bridge, 59 L.J.M.C. 49. And even where the statute contains a clause declaring that the justice's decision should be final: Leicester v. Hewitt, 57 J.P. 344; Sweatman v. Guest, L.R. 3 Q.B. 262. As to what are questions of law upon which a case may be stated, see R. v. Garrow, 5 B.C.R. 61.

The proper course is, to submit a point or points of law and not to seek the opinion of the court upon the evidence generally as to its sufficiency to support the conviction: R. v. Brennan, 6 Cox, C.C. 381.

The question, what threats are such a menace as constitutes a crime under Code 404, is a question of law: R. v. Gibbons. 12 Man. R. 154, 1 Can. Cr. Cas. 340.

A reserve case should not be granted when the magistrate has no doubt, whatever, on the question of law raised; but the party may then apply to the Court of Appeal for leave: R. v. Letang, 2 Can. Cr. Cas. 505.

Question of Jurisdiction of Justice.—The question whether the justice acted in a case in which he had no jurisdiction may be submitted: R. v. Paquin, Q.R. 7 Q.B. 319.

The question, whether the justice had authority, when hearing several charges against the same defendant at one time, to postpone the adjudication of the first until he has heard the others, is a question of jurisdiction, and it was held that he must adjudicate upon each case at its conclusion, or if necessary to take time to consider the first one, he must adjourn the others and adjudicate on the first one tried before proceeding with the others: R. v. McBerny, 29 N.S.R. 327.

The rule is that a case is not to be stated upon a point which was not raised on the trial before the justice: Perkins v. Huckstable, 23 J.P. 197.

But on an obvious point going to the root of the whole matter, and of which the justice should himself have taken cognizance, a case may be stated, even if it has not been raised on the trial: Ex. p. Markham, 21 L.T. 748.

On a decision of the court on a point raised by case stated it is res adjudicata, and the same question cannot afterwards be raised on a motion to quash the conviction: R. v. Monaghan, 34 C.L.J. 55.

Recognizance .- At the time of making the application to the justice, and before a case is stated and delivered to him by the justice, the appellant shall, in every instance, enter into a recognizance before such justice or any other justice excising the same jurisdiction, with or without surety or surities, and in such sum as to the justice seems meet, conditioned to prosecute his appeal by case stated without delay, and to submit to the judgment of the court, and pay such costs as are awarded by the same; and shall, at the same time, pay to the justice such fees as he is entitled to: and the appellant, if in custody, shall be then liberated, upon the recognizance being further conditioned for his appearance before the same or such other justice as is then sitting, within ten days after the judgment of the court has been given, to abide by such judgment, unless the justice's decision appealed against is reversed: Code 900 (4).

FORM OF RECOGNIZANCE ON CASE STATED UNDER CODE 900.

Canada, Province of Ontario, Be it remembered that on the County of in the county of A.D. 19 , C. D. of the place (occupation) and J.K. of the same place (occupation) personally came before me, the undersigned, one of His Majesty's Justices of the Peace, in and for the said county of ledge themselves to owe to our Sovereign Lord the King the several sums following, that is to say: The said C.D. the sum of dollars, and the said G.H. and J.K. the sum of dollars each of lawful money of Canada to be made and levied of their goods and chattels, lands and tenements respectively, to the use of our said Lord the King, his heirs and successors, if he, the said C.D., fails in the condition hereunder written.

Taken and acknowledged the day and year first above mentioned at before me,

M.L., a Justice of the Peace, in and for the County of

Whereas the above bounden C.D. was on the 19 , convicted before efore , a justice of the peace in and for the said for that the said C.D. (state the charge) and afterwards county of on the day of A.D. 19, the said C.D. desiring to question the said conviction on the ground that it is erroneous in point of law (or is in excess of jurisdiction) applied to the said justice to state and sign a case for the opinion of (name the court, e.g., the High Court of Justice for Ontario).

The condition of the above written bond or obligation is such that if the said C.D. shall prosecute his appeal without delay and submit to the judgment of the said High Court of Justice (as the case may be) and pay such costs as shall be awarded by the same; and further, if the said C.D. shall appear before the said the same justice by whom he was convicted as aforesaid or such other justice as is then sitting, within ten days after the judgment of the said court has been given, to abide such judgment, unless the judgment appealed against is reversed, then the recognizance to be void, otherwise to stand in full force and virtue.

Note.—The appellant must also pay the justice's fees before he is entitled to have the case delivered to him: Code 900.

The recognizance need not be entered into at the time of the application to the justice, but must be entered into before the case is made up and delivered to him: Chapman v. Robinson, 1 E. & E. 25; Stanhope v. Thorsby, L.R. 1 C.P. 423.

The recognizance may be estreated as provided by Code 878 · Code 900 (13).

The fees payable to the justice are 25 cents for taking the recognizance: Tariff under Code 871, item 7; and 5 cents per folio for copies of the evidence and papers.

Application to Court for order for case stated.—Where the justice refuses to state a case the appellant may apply to the court, upon an affidavit of the facts, for a rule calling upon the justice, and also upon the respondent, to shew cause why such case should not be stated; and the court may make a rule absolute or discharge the application, with or without payment of costs, as to the court seen. meet; and the justice, upon being served with such rule absolute, shall state a case accordingly, upon the appellant entering into the recognizance, as provided by Code 900 (4): Code 900 (6).

Where the objection raised was that the justices had improperly received evidence, a rule ordering them to state a case was refused. It must appear that the decision was wrong in point of law: R. v. Maclesfield, 2 L.T. 352; see Christie v. St. Luke, Chelsea, 8 E. & B. 992. All the requirements of the statute must be complied with before the justice will be deemed to have refused to state a case.

A case may be reserved at any time, however remote from the judgment, if it is possible that some material benefit may accrue to the defendant therefrom: R. v. Paquin, Que. R. 7 Q.B. 19.

FORM OF AFFIDAVIT (CODE 900).

In the High Court of Justice.

In the matter of the King on the information of A.B. against C.D. in the County of make oath and say: -, (occupation)

1. That I am the above-named defendant C.D.

2. That on the summons (or arrested upon a warrant) herein, a true copy of which is now shewn to me marked Exhibit "A," and issued upon an information, a true copy of which is now shewn to me marked Exhibit "B."

3. On the day of A.D. 19, I appeared before E.F., Esquire, the Justice of the Peace named in the said proceedings, to answer to the charge therein mentioned, and the said Justice thereupon proceeded to hear and determine the said charge in presence of the said informant, A.B., and of myself, and upon hearing the evidence the said Justice convicted me of the said charge.

4. That the paper writing now shewn to me marked Exhibit "C" is a true copy of the evidence upon the said hearing as taken down by the

5. That upon the said hearing I took the objection before the said Justice that the said co. "iction was erroneous in point of law (or, was in excess of his jurisdiction) upon the grounds following (here state the

6. That I thereupon applied to the said Justice to state a case for the opinion of this Court upon the said questions so raised, but he refused to do so on the ground that the same were merely frivolous; and a certificate of such refusal was then granted by the said Justice, which certificate is now shown to me marked Exhibit "1)."

7. (State any facts which may be necessary to show that the quentions raised are substantial.)

RULE NISI TO COMPEL A JUSTICE TO STATE A CASE UNDER CODE 900.

In the High Court of Justice.

The Honourable Chief Justice The Honourable Mr. Justice The Honourable Mr. Justice

day the day of A.D. 19

In the matter of the King upon the information of A.P. against C.D.

Upon the application of the said (C.D.), upon reading the certificate of E.F., one of His Majesty's justices of the peace in aid for the county , of his refusal to state a case for the opinion of this court, at the request of the said C.D., foucling the question of the validity of a certain conviction made on a day of , by the said justice for that (set out the charge) upon the ground that the same is erroneous in point of law (or in excess of the said justice's jurisdiction), upon reading the affidavit of the said C.D. and upon hearing cousel for the said C.D.

It is ordered that the said E. F. and the said A. B., upon notice to them of this order to be given to them respectively, shall on the the forenoon or so soon thereafter as counsel can be heard before this court, at Osgoode Hall, Toronto, shew cause why the said E.F., as such

justice, should not be ordered to state and sign a case for the opinion of this court upon the following questions:

1. (Set out the points of law on which the conviction is claimed to be erronecias, or the question as to the justice's jurisdiction.)

On motion of Mr.

of counsel for the said C.D.

By the court,

Registrar.

RULE ABSOLUTE TO STATE A CASE UNDER CODE 900.

In the High Court of Justice.

The Honourable Chief Justice The Honourable Mr. Justice The Honourable Mr. Justice

day of day the A.D. 19

In the matter of, etc., (as in the above form of rule nisi).

Upon the application of the above named C.D. upon reading the rule A D. 19 , the therein mentioned day of nisi issued on the certificate of E.F., a justice of the peace for the county of refusal to state a case (as in the above form of rule nisi) upon reading the affidavits of and filed, and upon hearing counsel for the said A.B., C.D. and E.F. the convicting justice, respectively (or no one although duly notified). appearing for the said

- 1. It is ordered that the said E.F. do forthwith state and sign and transmit to this court, a case for the opinion of this court upon the following questions:
 - (1) (Set out the questions to be submitted).
- 2. And it is further ordered that the costs of and incidental to this application be paid by the said A.B. to the said C.D. forthwith after taxation thereof.

On motion of Mr.

of counsel for the said C.D.

By the Court,

Registrar.

Statement of Case-In drawing up the case stated care should be taken that it contains every question to be submitted for the opinion of the court, as the court will not decide upon any question not raised by the justice for its opinion: St. James, Westminster v. St. Mary, Battersea, 29 L.J.M.C. 26; see Hills v. Hunt, 15 C.B. 1, where the court refused an amendment of a case stated.

The duty of the court on a case stated is simply to answer a question of law put to them by the justice: Buckmaster v. Reynolds, 13 C.B.N.S. 62.

Form of Case.—The case should be stated in a complete form. It should be signed by the justice.

FORM OF CASE STATED.

(Cops 900.)

In the High Court of Justice.

In the matter of the King upon the information of A.B. (Respondent)

Case stated by E.F. one of His Majesty's Justices of the Peace in and Criminal Code of Canada.

I. On the day of A.D. 19, an information was C.D. on at (state the offence).

2. On the day of A.D. 19, the said charge was the evidence adduced and the statements of the said A.B. and C.D. and offence and convicted him thereof, but at the request of the solicitor (or counsel) I found the said C.D. guilty of the said counsel) for the said C.D. I state the following case for the opinion of this Honorable Court:—

It was shewn before me that (here set out the findings of fact under which the point of law arises).

The solicitor (or counsel) for the said C.D. desires to question the validity of the said conviction on the ground that it is erroneous in point judgment of this Honorable Court being: (here state the questions submitted, as for instance).

1. Whether the Municipal Act, R.S.O. chapter 223, section 569 (4), is constitutionally valid and binding upon the appellant, or is he, by thereof (or as the case may be).

2. (State other points of law in question for the opinion of the Court, if

Settling the Case.—The usual course is for one of the parties to the proceedings to draw up a special case, and serve notice of a time and place for settling the same, with a copy of the case, having first obtained an appointment for the purpose.

FORM OF NOTICE.

In the High Court of Justice.

The King on the information of A.B. against C.D.

Take notice that E.F., Esquire, a justice of the peace for the county of the day of A.D. 19, at the hour of o'clock in the noon, to be submitted by him herein, a copy of which is served herewith.

To

Solicitor for the said C.D. (or A.B. Respondent.)

Solicitor for the above named A.B. Appellant.

Notice of Hearing.—Notice of hearing should be served on the respondent with a copy of the case.

NOTICE OF HEARING CASE STATED.

(Heading and style of cause as in above.)

Take notice that an application will be made before this Court at Osgoode Hall, Toronto, on , the day of , A.D. 19 , at o'clock in the forenoon, or so soon thereafter as the o'plication can be made, for the hearing and determining by the Court of the questions of law arising on the case stated by E.F., Esquire, a Justic of the Peace for the County of , in this matter.

Dated his day of , A.D. 19 .

To the above named A.B., and to E.F., the Justice of the Solicitor for the said C.D. Peace above named.

The Hearing. The court to which the case is transmitted shall hear and determine the questions of law arising thereon, and affirm, reverse or modify the conviction, order or determination, or remit the matter to the justice with the opinion of the court, and may make such other order in relation to the matter, and as to costs, as the court sees ft. such orders are final and conclusive upon all parties: Coue 900 (7).

The court has no authority on a case stated to reduce the penalty awarded by the justice: Evens v. Hemingway, 52 J.P. 134.

The court will not affirm a conviction when material evidence was improperly received, even if there was sufficient good evidence to support the conviction: R. v. Dixon, 29 N.S.R. 462: and see R. v. Woods, 5 B.C.R. 585, distinguishing Mackie v. Attorney-General (1894), A.C. 57. If the point has been previously decided it is res judicata, and will not be again entertained on case stated: R. v. St. John, 2 Jur. 46; Hastings v. St. James, L.R. 1 Q.B. 43.

Amendment.—If the court thinks fit, it may order the case to be sent back to the justice for amendment, and the case may be amended accordingly, and judgment shall be given after amendment: Code 900 (8).

The application to amend may be made before the day of argument: Yorkshire Tire Co. v. Rotherham L.B., 4 C.B.N.S. 362; but there must be some substantial insufficiency: Townsend v. Read, 4 L.T. 447; Pedgrift v. Chevalier, 8 C.B.N.S. 246; Hodgson v. Little, 16 C.B.N.S. 202.

Who May Hear.—The authority and jurisdiction vested in the court by Code 900, for the opinion of which a case is

stated, may, subject to any rules and orders of court in relation thereto, be exercised by a judge of such court sitting in chambers: Code 900 (9).

Quære, whether Code 900 (9), applies to an application to the justice to state a case: per Channell, B., Ex p. Smith, 27 L.J.M.C. 186. In England the application is made to a Divisional Court of the Queen's Bench Division under rule 80, C.O.R. (1886). It is submitted that in Ontario the application for a rule should be made to the court, and not to a judge in chambers.

FORM OF ORDER.

(Heading and style of cause as in order for delivery of case stated ante page 90.)

Upon the application of the above named C.D., upon reading the Case Stated by E.F., Esquire, a Justice of the Peace for the County of in this matter touching the question of the validity of a certain conviction of the said C.D. made by the said Justice of the Peace on the day of

A.D. 19, for that (set out the charge) upon the grounds that the same is erroneous in point of law (or in excess of jurisdiction or as the case may be) and submitting the following questions for the opinion of this Court thereon, namely :

1. (Set out the questions submitted.)

Upon hearing ounsel for the said C.D. and for the said A.B. and E.F. respectively (or no one appearing for the said although duly notified).

It is ordered that the said conviction be and the same is hereby affirmed (or quashed, as the case may be, see Code 900 (7)).

2. And it is further ordered that the costs of and incidental to this application be paid by the said forthwith after taxation thereof. to the said

On motion of Mr.

of counsel for the said

By the Court

Registrar.

N.B. No costs can be ordered against the justice : See Code 900 (7).

Costs.—The court has power to award costs, but any justice who states and delivers a case in pursuance of the Code, shall not se liable to any costs in respect to or by reason of such appeal: Code 900 (7).

Costs should be applied for on the disposal of the case by the court, and may not be entertained afterwards: Budenburg v. Roberts, L.R. 2 C.P. 292; Carswell v. Cook, 12 C.B.N.S. 242; Cook v. Montagu, L.R. 7 Q.B. 418.

But when the justice improperly refused to state a case, the court, on ordering a case stated, awarded costs against the justice: R. v. Bradford (Jus.), 48 J.P. 149.

The applicant is generally entitled to his costs on a decision in his favour; even if the respondent does not appear to support the justice's decision: Shepherd v. Folland, 49 J. P. 165; Wednesurry v. Stephenson, 9 L.T. 731.

On quashing a conviction, costs are given against the prosecutor: Venables v. Hardnan, 1 E. & E. 79: and may be allowed against an officer of the crown who is prosecutor: Moore v. Smith, 23 J.P. 133: Walsh v. The Queen, 16 Cox C.C. 435.

On abandonment, or where the appeal by case stated was dropped, costs were ordered against appellant: Crowther v. Boult, 13 Q.B.D. 680, and so, even if no notice of the hearing of the appeal is given; and so, under the English practice the appeal could not be heard, costs were given against appellant: South Dublin v. Jones, 12 L.R. Ir. 358.

Where the decision of the justice was reversed on a point not reised before him costs were refused: Stainson v. Browning, 12 Jur. 262.

The justice is not entitled to the costs of obtaining legal assistance in preparing a case stated: Luton, L.B. v. Davis, 2 E. & E. 678.

But the costs of the successful party may include charges for preparing and amending the case stated: Glover v. Booth, 31 L.J.M.C. 270.

Death of Respondent.—The death of the respondent does not prevent the court from dealing with the matter: Gainsbury v. Ryne, 34 J.P. 810; R. v. Fitzgerald, 29 O.R. 203.

After Decision Justice may issue Warrant.—After the decision of the court, in relation to the case stated, the same or any other justice exercising the same jurisdiction, shall have the some authority to enforce any conviction, order or determination affirmed, amended or made by the court, as the justice who originally decided the case would have had, if it had not been appealed against, and no action or proceeding shall be taken against a justice for enforcing it by reason of any defect in it: Code 900 (10).

If the justice refuses to act in accordance with the judgment of the court upon a case stated, he may be compelled by mandamus to do so: R. v. Haden Corser, 8 T.L.R. 563.

Court may enforce its own Order.—If it deems it necessary or expedient the court may enforce any order by its own process: Code 900 (11).

Certiorari not necessary.—No certiorari or other writ shall be required in aid of this proceeding: Code 900 (12).

(C.) Cam Stated by Magintrates Acting under Part 5.5, Criminal Code.

On Summary Trial.—By their express terms neither the clauses of the Criminal Code relating to appeals from convictions by justices under part 58 (Code 79 et seq.), nor the clauses relating to the proceeding by "case stated" by justices (Code 900 et seq.), apply to convictions or orders made under the clauses relating to summary trials by magistrates exercising special summary jurisdiction under part 55 of the Criminal Code. Code 808 expressly excludes the provisions of part 58 from applying to magistrates' proceedings under part 55: see R. v. Egan, 1 Can. Cr. Cas. 112; R. v. Boguie, 3 Can. Cr. Cas. p. 492.

By the Dominion Statute, 1895, c. 40, an apperl is allowed from a conviction made by two justices under Code 783, s.-ss. (a) and (f), in the same way as an appeal lies from an ordinary summary conviction by a justice, described and p. 69; but that statute does not apply to magistrates: and there is no such appeal from a conviction by a magistrate acting under clauses (a) or (f) or any of the other clauses of Code 783. The only appeal from a magistrate (except when acting as an ex officio justice) is under Code 742-751: R. v. Racine, 3 Can. Cr. Cas. 446; R. v. Nixon, by Ferguson, J., 24th Sept., 1899.

The Court of Criminal Appeal in Ontario was formerly a Divisional Court, the words "Court of Appeal," in Code 742, being interpreted by Code 3, par. (e), sub-par. (i), as enacted in the Act of 1895, c. 40, to be "any division of the High Court of Justice." But now, by the Criminal Code Amendment Act, 1900, this sub-par. (e) is repealed, and a new one is substituted, constituting the Court of Appeal for Ontario the Court of Criminal Appeal in Ontario.

In Quebec, the Court of Criminal Appeal is the Court of Queen's Bench, Appeal side; in Prince Edward Island, the Supreme Court of Judicature: in Manitoba, the Court of

Queen's Bench; and in the other provinces and the North-West Territories, the Supreme Court in banc: See Code 3 (s).

The court before which any accused person is tried may, either during or after the trial, reserve any question of la x arising either on the trial or on any of the proceedings preliminary, subsequent or incidental thereto or arising out of the direction of the judge, for the opinion of the "Court of Appeal" in manner provided by the statute: Code 743 (2).

Either the presecutor or the accused may, during the trial, apply to the court to reserve any such question, and the court, if it refuses so to reserve it, shall, nevertheless, take a note of

auch objection: Code 743 (3).

After a question is reserved the trial shall proceed as in

other cases: Code 743 (4).

If the result is a conviction the court may postpone sentence or respite its execution till the question has been decided, and may commit the person convicted to prison or admit him to bail, with one or two sufficient sureties, in such sums as the court thinks fit, to surrender at such a time as the court directs: Code 743 (3). If the question is reserved a case shall be stated for the opinion of the Court of Appeal: Code 743 (6).

apply to the Court of Appeal for leave to appeal: Code 744 (1), (3), as amended by the Criminal Code Amendment Act, 1900. Formerly leave of the Attorney-General had to be obtained for leave to apply to the Court of 'ppeal for leave to appeal by case reserved, but now, by the amended Act of 1900, the application may be made direct to the Court of Appeal. If leave is given by the Court of Appeal a case is to be stated for the opinion of the Court of Appeal, as if the question had been reserved: Code 744 (4).

A case may be reserved, under Code 743, at any time, however remote from the judgment, if it is possible that some material benefit may accrue to the defendant thereon: R. v.

Pequin, Que. 7 Q.B. 19; 2 Can. Cr. Cas. 134.

It is a question whether the case is to be settled by the Court of Appeal or by the judge or magistrate. In R. v. Coleman, 30 O.R. 93, the Court of Appeal made an order for leave, which included in detail the form of the case to be stated, and a direction to the trial judge to state the case so set forth: See note, 2 Can. Cr. Cas. 539.

Notice of appeal must be served on the accused, if acquitted, and not on his solicitor: R. v. Williams, 3 Can. Cr. Cas. 9.

Evidence for Court of Appeal.—If on appeal the trial judge or magistrate thinks it necessary, or if the Court of Appeal so desires, the former shall send to the Court of Appeal a copy of the evidence or judge's notes or such part as may be material; and the Court of Appeal may, if only the judge's notes are sent, and it considers such notes defective, refer to such other evidence of what took place at the trial, as it may think fit: Code 745.

Powers of Court of Appeal.—The Court of Appeal may also send back any case to the court by which it was stated, to be amended or re-stated: Code 745.

As to the powers of the Court of Appeal in dealing with cases reserved by the magistrate see Code 746. When two persons are jointly convicted, the court may, on deciding the objection raised by case stated by one of them only, also quash the conviction of the one who has not appealed R. v. Saunders (1899), 1 Q.B. 490.

An appeal lies from the decision of the Court of Appeal to the Supreme Court of Canada, on the case stated by a magistrate under Code 742; but only in the event of the conviction being confirmed, and of some of the judges of the Court of Appeal dissenting: Code 742 (2) and 750: R. v. Cunningham, Cassell's Dig., 2nd ed. 107. And an appeal also lies to the Supreme Court from a decision of the Court of Appeal refusing a motion for a reserved case, under Code 742, if any of the judges of the latter court dissent, or when the appeal is based on two grounds and any of the judges have dissented upon one of them, and only as to the ground upon which was such dissent: Code 742 (2): McIntosh v. The Queen, 23 S.C.R. 180. But not when a new trial was granted by the Court of Appeal: Viau v. The Queen, 29 S.C.R. 90.

Code 750 (3), 751 prohibit appeals in criminal cases to the Privy Council. But see ante p. 51, and see Riel v. Regina, L.R. 10 A.C. 675.

A reserved case can only be stated by a magistrate under Code 742, in cases under Code 785 and not in cases under Code 786: R. v. Hawes (N.S.S.C.), 37 C.L.J. 36.

2. APPEALS UNDER PROVINCIAL STATUTES.

The provisions of the Cr. Code relating to appeals and "case stated" do not apply to convictions or orders made under provincial statutes; R.S.O. c. 90, expressly excludes the provisions of the Cr. Code in regard to appeals, and the Ontario Legislature has made provision for such appeals by R.S.O. c. 92, and by R.S.O. c. 90, s. 7. Code 840 expressly limits the application of Part 58 of the Cr. Code to proceedings under Dominion laws: R. v. R. Simpson Co., 28 O.R. 231; this applies likewise to proceedings under the legislation of other provinces; Lecours v. Hurtubise, 2 Can. Cr. Cas. 521: Scottstown v. Beauchesne, Que. R. 5 Q.B. 554; Superior v. Montreal, 3 Can. Cr. Cas. 379.

(A.) Appeals to the County Judge.

Appeals from convictions and orders of justices under Ontario laws may be made to the county judge, but only in cases in which by any Ontario statute such appeal is expressly allowed: R.S.O. c. 92, s. 2.

But if the particular statute relating to the offence does not give an appeal to the county judge, an appeal will lie to

the general sessions under R.S.O. c. 90, s. 7.

There is no provision in either of the above Ontario statutes similar to that in Code 879, for an appeal by the prosecutor from an order dismissing the case; and in cases under Ontario statutes an appeal lies only at the instance of the person against whom a conviction or order has been made.

It is a general principle of law that no appeal lies except by statute: R. v. London (Jus.), 25 Q.B.D. 360. No appeal can therefore be made from an order dismissing the case: R. v. Toronto P. S. Board, 31 O.R. 457; R. v. London (Jus.), 25 Q.B.D. 357; which was under an even stronger clause in favour of an appeal in the Imperial Act, 5 & 6 Will. IV., c. 50, s. 105: Payne v. Uxbridge (Jus.), 45 J.P. 327.

The following are proceedings on an appeal to the county judge under R.S.O. c. 92, when such appeal is allowed by the

statute relating to the offence.

If the appeal is against a conviction whereby only a money penalty is imposed, the person convicted and desiring to appeal may deposit with the justice the amount of the

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penalty and costs, and a -o 910; or, in tead of so doing, he may enter into a recognizion e before any justice in double the amount of the penalty and costs: R.S.O. c. 92, s. 3 (a). The form of recognizance is given in the above statute at

If, however, the appeal is against a conviction awarding imprisonment as a punishment for the offence, the person convicted must enter into a recognizance (Form 2 in the statute, p. 1000) in not less than \$100, or more than \$200, as the convicting justice directs, and also in double the amount of the penalty and costs awarded: s. 3 (b).

If, in either of the above cases, the person convicted is in custody and does not make the deposit or enter into the above recognizance, he must remain in custody pending the appeal: s. 5; and must also deposit with the convicting justice \$10: s. 3 (c).

Upon compliance with any of the above contingencies, the person convicted may carry his appeal to the judge, and if s. 3 (a) and (b) has been complied with, proceedings on a conviction are to be stayed, and the justice is to issue his warrant (Form 3 to the statute) to liberate the appellant:

In cases under s. 3 (c) the accused must remain in custody pending the appeal: but if the defendant is in custody for non-payment of a fine and costs only, the justice may order his liberation upon his depositing the amount of the fine and costs in addition to the \$10 mentioned in s. 3 (c).

Upon compliance with the above conditions, the person convicted may within ten days after the justice has pronounced his adjudication (unless the delay is caused by the fault of the convicting justice, and then within one calendar month at latest) apply to the county judge for a summons to

Upon the return of the summons, the judge, either with or without hearing further evidence, as he sees fit, may affirm, amend or quash the conviction, and fix the costs, if any, allowed upon the appeal: s. 7.

The judge has the same authority as to costs as the General Sessions have under ss. 879, 880 of the Cr. Code, and may allow solicitors' costs and counsel fees. And there is no appeal to the High Court from the discretion of the judge as to such costs; R. v. McIntosh, 28 O.R. 603.

FORM OF SUMMONS.

In the County Court of the County of

day of , Judge of the County \ day the His Honour A.D. 19 . in Chambers. Court of the County of

In the matter of the appeal between A.B., appellant, and C.D., respondent.

Upon reading the conviction made herein on the A.D. 19, the depositions of witnesses taken before the convicting justice (or justices) the notice of appeal and affidavit of service thereof and other papers filed with the clerk of this court and upon hearing what was alleged; let the above named respondent C.D. (the complainant) and the attend before me at my County Crown Attorney for the county of chambers in the court house in the A.D. 19 , at

day of o'clock in the forenoon and shew cause why the conviction of the above day the named appellant made upon the complaint of the respondent dated the A.D. 19 , and now on file with the clerk of this

nade by , a justice of the peace in and for the county (or as the case may be) whereby the said appellant A.B. was day of court and made by or (or us the case may or) whoreby the said appearant appearant convicted for that (set out the charge) the said C.D. being the informant, and the said justice (or justices) adjudged the said A.B. for his said offence (set out the adjudication) should not be set aside and quashed with costs on the grounds:

1. (Here state the grounds of objection to the conviction.) and upon grounds disclosed in said affidavits and papers filed.

Judge.

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ORDER ON APPEAL TO COUNTY JUDGE.

In the County Court of the County of day the day of His Honour The Judge of the County Court of the A.D. 19 . in Chambers. County of

In the matter of, etc. (as in above summons).

Upon reading the summons granted herein on the day of A.D. 19 , the information, depositions of witnesses, the conviction herein and all others the papers filed, and upon hearing counsel for the appellant and respondent (or as the case may be) or the said not appearing although duly notified in that behalf as required by law as by affidavit of service appears.

, judge of the County Court of the County of order and adjudge that the conviction of the appellant made upon the A.D. 19 , day of complaint of the respondent dated the and now on file with the clerk of this court, and made by (or as the case justice of the peace in and for the county of may be) whereby the said appellant A.B. was convicted for that (here set out the charge as in the conviction) the said C.D. being the informant, and it was adjudged that the said A.B. (set out adjudication) be and the same is hereby quashed, rescinded and set aside without costs (or with costs to be paid by the said C.D. to the said A.B. forthwith after taxation (as the case may be).

Judge.

Upon the judge's order affirming the conviction being pro-101 duced before the justice, the latter is to issue a warrant of distress, and if there is no sufficient distress, he is to issue a warrant of commitment, for the recovery of such further costs as the sum deposited is insufficient to pay; but if a recognizance has been given, no warrant is to be issued and the recognizance is to be estreated in the manner described

If the conviction is quashed by the judge, he is to order the money deposited to be returned to the accused, and he may also allow and fix the costs to be paid by the complainant, and, if necessary, may issue a distress warrant to levy the same. If the conviction adjudged imprisonment for the offence, and it is affirmed, or amended and affirmed by the judge, or if the person convicted fails to prosecute the appeal within the time limited by s. 6, the judge is to issue a warrant (Form 4, p. 1001 of the statute) committing the defendant to prison; and if the defendant does not surrender himself into the custody of the constable entrusted with the warrant within one week after the date of the order, the recognizance given shall be deemed broken, and upon an affidavit of the constable or other proof of such non-surrender, the judge may certify (Form 5 to the statute) the default on the back of the recognizance, and transmit the same to the clerk of the peace: s. 9: and the recognizance may be estreated at the next sitting of the General Sessions: s. 9 (2).

The above mentioned proceedings upon the recognizance do not relieve the defendant from undergoing the punishment awarded by the justice; and he may be arrested under the warrant of the judge in any part of Ontario, and imprisoned accordingly: s. 9 (2). If it appears that the person convicted has served a portion of the time of imprisonment, the warrant of commitment is to be only for the residue of the term: s. 11. The warrant is to be executed in the same manner as warrants of commitment upon summary convictions under the Cr. Code: s. 12.

So that if the accused is not in the judge's county, the warrant would have to be "backed" as described infra, before

If the justice's conviction against the defendant was for a money penalty only, no warrant of commitment can be issued: but upon an affidavit of default of payment, the

judge is to certify uparameter recognizance the fact of such default, and the recognizance is to be sent to the clerk of the peace to be estreated at the next General Sessions.

The justice is to retain the money deposited with him on the appeal for six calendar months unless judgment is sooner given by the judge: and upon such judgment or on the expiration of six months from the date of the conviction, the money is to be paid over to the person entitled to it according to the judgment, but if no judgment is given within six months the conviction is to stand, and any justice for the county may issue the warrant of commitment for the unserved portion of the imprisonment awarded by the conviction, and the appeal falls to the ground: s. 14.

(B.) Appeals to General Sessions under Onturio Laux. (R.S.O. c. 90, s. 7.)

When the statute under which a conviction is made does not provide to the contrary, an appeal will lie from a justice or magistrate to the General Sessions from any conviction under an Ontario law, R.S.O. c. 90, s. 7; whether such appeal is expressly allowed by the particular statute relating to the offence or not.

The proceedings on such appeal are precisely similar to those in an appeal under Code 879 et seq. except that there is no appeal, by the prosecutor on a dismissal of a case by a justice under an Ontario law; see cases noted page 98; and it is also provided that in appeals under an Ontario statute, either of the parties to the appeal may call witnesses and adduce evidence in addition to the witnesses called at the hearing before the justice: R.S.O. c. 90, s. 8.

Where there is a conviction under the by-law set out in the Public Health Act, R.S.O. c. 205, as distinguished from any of the provisions in the Act itself, an appeal will lie from such conviction to the session, notwithstanding s. 112 which has no application: R. v. Coursey, 26 O.R. 685, 27 O.R. 181.

Forms of Proceedings.—The proceedings provided by Code 880, 888, are made applicable to such appeal, it being so expressly declared in s. 8, c. 90; and the steps to be taken and forms of notice of appeal and other proceedings will be the same as those stated at p. 69, et seq.

Sec. 9 (1), (2) of the Ontario Act are the same as Code 880 (a) (b) as to the time when notice of appeal is to be given and the sittings of the court at which it is to be heard.

On an appeal under the Ontario statute the rule as to reading the depositions of a witness taken upon the hearing before the justice is different from that in an appeal under the Cr. Code, s. 879. In the latter the depositions may be read on the appeal and are to have the same force as if the witness was then and there examined: provided that the court must be satisfied by affidavit or other evidence that the personal attendance of the witness cannot be obtained by any reasonable efforts: Code 881; but under s. 10 of c. 90, the depositions can only be read when it is proved that the witness is dead, too ill to attend, or is absent from Ontario, or that after diligent inquiries he cannot be found to be served with a subpena.

It must also be proved that the depositions were taken in the presence of the accused, and that he or his counsel or solicitor had full opportunity to cross-examine; and the depositions must purport to be signed by the justice by or before whom they purport to have been taken.

Upon the appeal to the General Sessions, the whole case is up for trial de novo before the court appealed to: R.S.O. c. 90, s. 8.

The appellant may abandon his appeal by giving six days' notice, s. 11: for form, etc., see p. 78: and thereupon the justice or magistrate may tax any additional costs of the respondent, adding the same to the original costs, and proceed on the original conviction or order, as if there had been no appeal.

(C.) Case Stated under Ontario Laws.

An appeal by way of "case stated" in prosecutions under Ontario laws is provided by R.S.O. c. 91, s. 2 (2). The provisions of the Cr. Code do not apply to such proeding: R. v. Robert Simpson Co., 28 O.R. 231. The case is to be stated to the Court of Appeal, and it is only to be allowed upon a question of the constitutionality of the statute under which the conviction or order is made: R. v. Wason, 17 A.R. 221: R. v. Edwards, 19 A.R. 706; R.S.O. c. 91, s. 5.

It is restricted solely to that question, and does not extend to a case in which the decision depends upon the question whether the statute is applicable to the defenda: 's: R. v. Toronto Ry. Co., 26 A.R. 491; nor whether it is applicable to a given state of circumstances: Monkhouse v. G.T.R., 8 A.P. 637; nor does it extend to a question of the validity

of some other statute such as a statute regulating procedure or evidence, and which arises in the case: R. v. Edwards, 19 A.R. 706. The following are the proceedings provided by R.S.O. c. 91:

The case is to be stated to the Court of Appeal; and either party may apply to a justice after he has announced his decision to state a case for the opinion of that court. A recognizance is to be entered into by the applicant before the justice who heard the case, with or without sureties as the justice may set fit: R.S.O. c. 91, ss. 5, 6.

See ante page 87, for form of recognizance.

If the appellant is in custody and desirous to be liberated, the recognizance is to be further conditioned that the accused will appear before the same justice, or, if that is impracticable, before some other justice within ten days after the judgment of the Court of Appeal shall be given, to abide such judgment unless the determination appealed from is reversed: s. 6 (3). See ante p. 88 for form.

The appellant is also to pay to the justice the fees mentioned in Schedule A. to the statute, and any other fees

to which the justice is entitled by law: s. 6 (2).

The fees are given in the schedule at the end of the statute: R.S.O. p. 994. And the justice is also entitled, under the Ontario Tariff, R.S.O. c. 95, schedule 1, item 12, to 10 cents per folio of one hundred words, for copies of any

papers required to be attached.

Upon entering into the above recognizance conditioned as provided by s. 6 (1) (3), the appellant, if in custody, is to be liberated: s. 6 (3). If the recognizance is not conditioned as required by s. 6 (3), but only under s. 6 (1), the appellant, if in custody, is to so remain, pending the hearing of the case stated by the Court of Appeal: s. 6 (3).

No security is required if the appeal is brought by or under the directions of the Attorney-General for Ontario: s. 6 (4); nor is the justice to refuse to state a case if required by the Attorney-General or under his direction: s. 6 (5).

In other cases the justice may refuse to state a case if of opinion that the application is merely frivolous; and in that event he is to grant a certificate of such refusal upon the applicant's request: s. 6 (6).

Form of certificate is given ante p. 84.

The applicant may apply upon such certificate to a judge of the Court of Appeal in Chambers, or to the court upon notice and an affidavit of the facts: see p. 89 for forms; and, if ordered, the justice must state a case accordingly upon the above recognizance being entered into: s. 6 (7).

The Court of Appeal may reverse, affirm, or amend the justice's decision, or may remit the matter back to him with its opinion, and make any order as to the same and as to costs: but no costs are to be awarded against the justice: s. 7.

Upon an order of the Court of Appeal being presented to him, the justice who heard the case, or any other justice having the same jurisdiction, is given the same authority to enforce the conviction or order affirmed, amended or made by the Court of Appeal, as the justice who originally heard the case would have had, if his decision had not been appealed from: s. 9. No writ of certiorari is necessary in aid of the proceedings before the Court of Appeal: s. 10. If the conviction is affirmed, and the recognizance entered into is not complied with, it is to be transmitted by the justice to the clerk of the peace to be estreated, with a certificate endorsed by the justice stating in what respects it has not been complied with: s. 12.

Form of certificate is given ante p. 80.

After the above proceedings by way of case stated, no appeal lies to the County Judge or General Sessions from the justice's decision: s. 13.

CHAPTER VI.

EVIDENCE.

The ordinary rules of evidence which apply to criminal trials, as acted upon in courts of justice, are also applicable to proceedings before justices; and these rules are generally the same in criminal as well as in civil cases, except when varied by statutes applicable to civil proceedings only: Roscoe's Cr. Ev., 10th ed. 1; Paley, 6th ed. 124: R. v. Burdett, 3 B. & Ald. 717; and see R. v. White, 4 F. & F. 384.

The Canada Evidence Act 1893, and the amendment of 1898, and also the clauses of the Cr. Code relating to evidence on trials before the High Court, will govern the taking of evidence in summary trials and preliminary inquiries before justices and magistrates under Dominion laws. But they do not apply to trials under Ontario laws, provision being made for the latter by the Ontario Evidence Act, R.S.O. c. 73.

Criminal procedure is within the exclusive cognizance of the Dominion Parliament: B.N.A. Act, s. 91 (27).

Competence of Witnesses.—No witness in any criminal case is now incompetent through crime or interest: Can. Ev. Act 1893, s. 3; Ont. Ev. Act, R.S.O. c. 73, s. 2.

But, notwithstanding a similar provision in the English Act, 6 and 7 Vict., c. 85, s. 1, it was considered by the court, in R. v. Webb, 11 Cox C.C. 133, that a prisoner under sentence of death, being legally dead, was not a competent witness.

The character or condition of a witness, or his interest in the subject matter, only affects the weight to be attached to his evidence; and everyone is now a competent witness, with the possible exception above mentioned; and except idiots and lumetics, the former (idiots) being totally incapable of giving evidence, while the latter may give evidence during a lucid interval: 3 Russell, 6th ed. 654.

A deaf-mute may give evidence if it clearly appears he has a proper sense of the obligation he is undertaking, and is able to communicate his testimony. *Ib.* A person who is mute may give his evidence in any way he can make it intelligible. Can. Ev. Act 1893, s. 6.

Husband and Wife.—By s. 4 of the Can. Ev. Act, 1893, the accused, and the wife or husband of the accused, is a competent, but not a compellable witness; but the husband or wife cannot disclose 'ny communication made during marriage.

So in any proceeding, whether it is a summary trial or a preliminary examination under any Dominion law, the evidence of the accused, or the wife or husband, will be received only in case it is offered by themselves, and subject to the prohibition in regard to communications during marriage.

In trials for infractions of Ontario laws, however, the law is different.

The Ontario Legislature, by the Ont. Ev. Act, R.S.O. c. 73. s. 4, has enacted that, although a witness cannot be compelled to answer incriminating questions (s. 5), the accused (or the wife or husband of the accused), is not only a competent witness, but may be called and compelled to give evidence for the prosecution before any justice of the peace, mayor or police magistrate on the trial of any proceeding, matter or question cognizable by him: s. 9; R. v. Nurse, 2 Can. Cr. Cas. 57; R. v. Fee, 13 O.R. 590; R. v. Askwith, 31 O.R. 150.

Incriminating Questions.—But it is submitted that the accused, upon a trial of any matter under an Ontario law, while compellable "to give evidence therein" under s. 9, at the request of the prosecution, and must necessarily answer any questions tending to incriminate himself in the particular case under trial; yet by reason of s. 5, he cannot be compelled to give any answers to questions tending to incriminate himself in any other matter: see Charnock v. Merchant, (1900), 1 Q.B. 474.

Section 9 of the Ontario statute applies, whether or not the charge is of the class of infractions of Ontario laws, which may be designated as "crimes." The words "not being a crime" contained in R.S.O. 1887, c. 61, s. 9, are omitted, (as no longer necessary), from s. 9 of the Revised Statutes of 1897; it having been held that the Ontario Legislature has jurisdiction to regulate the proceedings and evidence in cases under its own laws, whether the offence may be considered "a crime" or not: R. v. Bittle, 21 O.R. 605; and also to impose punishments for infractions of laws which they have power to enact. B.N.A. Act, s. 92 (15); Attorney-

General of Canada v. Attorney-General of Ontario, 23 S.C.R. 458: see also R. v. Douglass, 1 Can. Cr. Cas. 221; 11 Man. R. 401.

The provision made by the Ontario statute s. 8 also differs from a somewhat similar provision contained in the

latter part of s. 4 of the Canada Evidence Act.

In the latter, the husband or wife of the accused is absolutely prohibited from disclosing communications made during marriage; while under the Ontario statute, such communications may be made voluntarily, but not compulsorily.

As to other witnesses; in prosecutions under Ontario laws, a witness is not bound to answer any question tending to incriminate himself: Ontario Evidence Act, R.S.O. c. 73, s. 5; while in cases under Dominion laws, the witness is bound to answer all questions, even if the evidence tends to incriminate himself; but if he objects or claims privilege when required to give the evidence, the Asclosure cannot be used against him afterwards, except for perjury in giving it: Canada Evidence Act, 1893, c. 31, s. 5, as amended by Dominion Statute 1898, c. 53, s. 1.

Under the latter statute, a witness who is not a party to the particular case which is being tried is liable to be called as a witness and cannot be excused from answering, on the ground that he is himself also a defendant in a separate prosecution, in connection with the same transaction, and that his answers would tend to incriminate himself: R. v. Mc-Linehy (Que.), 2 Can. Cr. Cas. 416; R. v. Viau, Que. R. 7 Q.B. 362; see also R. v. Jackson, 6 Cox, C.C. 525; R. v. Gallagher, 13 Cox, C.C. 61.

The privilege allowed, in Ontario cases, under the Ontario Evidence Act, of refusing to answer incriminating questions, can only be claimed by the witness himself; and he may answer if he chooses, notwithstanding any of the parties

object to it.

It seems to be a question for the justice or magistrate, and not for the witness, to determine from the nature of the question and the circumstances, as to whether the privilege claimed is well founded or not; that is, whether the answer would really have the tendency to incriminate the witness; and a witness must pledge his oath to it. It must appear that the danger to be apprehended by the witness is real and appreciable, and not of an unsubstantial character, having

reference to some improbable and remote contingency, or such as any reasonable man should not be affected by, and which ought not to obstruct the administration of justice: R. v. Boyes, I. B. & S. 311; ex parte Reynolds, 20 Ch.D. 294; Osborn v. London Dock Co., 10 Ex. 698. The question cannot be argued by counsel: R. v. Adey, 1 M. & Rob. 94.

If it is not clear, however, that the answer would not tend to incriminate the witness, the privilege of not answering should be allowed: Russell, pp. 644, 645. If the witness cannot be prosecuted by reason of the matter being barred by lapse of time, the evidence could not tend to render him liable to prosecution: and it is not privileged and must be given if it is relevant to the issue: Russell, 615: and so where the party had previously been pardoned for the offence: R. v. Boyes, 1 B. & S. 311. If the question in any substantial degree has a tendency to incriminate a witness, even though it does not do so directly, the witness is privileged from answering: Power v. Ellis, 6 S.C.R. 1; Lamb v. Munster, 10 Q.B.D. 110; Weiser v. Heintzman, 15 P.R. 258:

Questions Affecting Character.—The privilege does not extend to answering questions affecting the witness's character. The witness is bound to answer all questions bearing upon the subject matter of the trial, even if the evidence may effect his character and reputation. But the justice should exercise his discretion, by refusing to allow questions concerning stale matters, not bearing upon the issue; and especially if they are such as are not calculated to affect the question of the witness's verscity, and the witness is not bound to answer questions as to matters not pertinent to the issue, and which relate to matters of an odious and infamous character. But questions bearing on the witness's present moral character, and upon his veracity, or shewing him to be profligate, must be allowed.

Previous Written Statements.—The Ontario Evidence Act provides that a witness may be cross-examined as to previous statements made by him in writing or reduced to writing, without the priting being shewn to him; but if it is intended to contradict the witness by the writing, his attention must, before such contradictory proof can be given, be called to the writing; and the judge may at any time during the trial, require the writing to be produced for his

inspection, and may make such use of it at the trial as he thinks fit: s. 17.

And under the same statute a witness may be cross-examined as to any inconsistent statement he may have made, relative to the subject matter; and if he does not distinctly admit making them, proof may be given; but he must first be asked whether or not he made them: a. 18.

Questions as to Previous Convictions.—A witness may also be asked whether he has been convicted of any crime; and if he denies or refuses to say, the fact may be proved by a certificate from the clerk of the court having the records, and by proof of the identity of the witness: s. 19.

The same rule applies in cases under Dominion laws: Code 95. Except as above provided the answer of a witness in cross-examination upon questions irrelevant to the issue must be accepted as final, and cannot be rebutted: 2 Taylor on Ev., 9th ed. 947; R. v. Lapierre, 1 Can. Cr. Cas. 413.

Adverse Witness.—The Ontario statute also provides, that a party cannot impeach the credit of his own witness, by general evidence of had character, but if the witness proves adverse, the party may be allowed to call evidence, to show that such witness previously made inconsistent statements, but the witness must first be asked if he made such statements: s. 20: see Bicknell and Seager, 2nd ed. 247. In proceedings under the Summary Convictions Clauses of the Cr. Code, the prosecution is not entitled to give evidence in reply, if the defendant has adduced no evidence, except as to general character: Code 856 (3).

Depositions in Previous Cases.—By consent of the defendant, or his counsel, the evidence taken in another case, either the same, or another defendant, may be read as evidence in the case: R. v. St. Clair, 27 A.R. 308.

Sufficiency of Evidence.—As to the sufficiency of the evidence, see Paley on Convictions, 6th ed., p. 124.

The general rule is that the evidence must support the charge in every material fact, with specific date and place. But a variance as to time between the evidence and the information, summons or warrant, on the summary trial, is not material if the information was, in fact, laid within the time limited by law: Code 847 (2); nor as to the place, if the offence was in fact committed within the justice's jurisdiction: Code 847 (3); nor any other variance: Code 847.

Adjournment.—If the defendant appears to have been mislead, the justice must adjourn the case to give the defendant time to meet the new facts, if he so desires: Code 847 (4). These provisions also apply to summary prosecutions under Ontario laws: R.S.O. c. 90, s. 2.

Privileged Official Communications.—Communications and reports of officers, and other official information of Government are privileged, if it is declared to be against the public interest to disclose them, and they cannot be disclosed without the consent of the Government: Horne v. Bentinck, 2 B. & B. 130, 162; Atty.-Gen. v. Briant, 15 M. & W. 169; R. v. O'Connor, 4 St. Tr. N.S. 935; Hennessy v. Wright, 57 L.J.Q.B. 594; R. v. O'Brien, 7 St. Tr. N.S. 1; Hardy's case, 24 St. Tr. 199, 753; and generally a police or other publication of the public officer cannot be required to give the names of persons on whose information he has acted, unless it is directly and necessarily in the interests of the prisoner: R. v. Richardson, 3 F. & F. 693; Marks v. Beyfus, 25 Q.B.D. 494; Humphrey v. Archibald, 21 O.R. 553.

This is on the ground of injury to the public service, and the question of allowing such evidence to be given is for the Government, or head of the department concerned, and not for the judge or magistrate,

And also upon grounds of public policy, it is the rule that, in all cases in which the Government is directly concerned (as in offences against the Revenue laws), an informer cannot be asked any questions tending to the discovery of the source of his information, or to shew the channels by which the disclosure of an offence was made to the officers of justice: 3 Russell, 592.

But in other cases such questions may be put, if, for any reason, the ends of justice require it: ib.; but not otherwise, for the answers would then be irrelevant, as not going to prove either the guilt or innocence of the accused.

Exceptions and Conditions.—As to the burden of proof in cases of provisoes, or exceptions from the operation of a particular law, Code 852 provides, that when the information negatives any exception, proviso or condition on which the prosecution is founded, it shall not be necessary for the prosecution to prove such negative; but that it lies on the defendant to prove the affirmative thereof. And Code 890 (c) provides, that a conviction shall not be held invalid because

of the omission to negative circumstances, the existence of which would make the act lawful, whether they are stated by way of proviso or exception, in the same or another section of the statute.

If an exception occurs in the description of the offence in the statute, it must be negatived by the prosecution, otherwise the defendant is not within the description of the offence; but if the exception occurs by way of proviso, and does not alter the offence, but merely states what persons are allowed to take advantage of the proviso, then it is for the defendant to prove that he is within the exception: Simpson v. Ready, 12 M. & W. 736; R. v. White, 21 C.P. 354; R. v. McNicol, 11 O.R. 659; see R. v. Nunn, 10 P.R. 395, in which it was held that a proviso allowing military bands to play in the public streets, was not an exception requiring to be negatived by the prosecution or in a conviction for playing musical instruments contrary to a by-law.

But a conviction was held bad, notwithstanding sub-sec. 855 for not negativing the exception in a by-law, under s. 583 of the Ontario Municipal Act prohibiting hawkers and peddlers trading without license, but excepting from its operation the manufacturer or his agent peddling goods manufactured in Canada: R. v. McFarlane, 33 C.L.J. 119: R. v. Smith, 31 O.R. 224; and see Ex p. Herrell, No. 2, 12 Man. R. 522; 3 Can. Cr. Cas. 15; R. v. Strauss (B.C.), 1

Can. Cr. Cas. 103, 108.

Public Documents.—As to proof of public documents, see Canada Evidence Act 1893, c. 31, s. 7; Ont. Evidence Act, R.S.O. c. 73, s. 21. And as to proof of private documents see 3 Russell, 469.

Municipal by-laws are proved by producing the original by-law, or a printed copy certified by the municipal clerk; Ontario Municipal Act, R.S.O. c. 223, s. 334; and they can only be so proved: R. v. Dowsley, 19 O.R. 622; R. v. Banks (N.W.T.), 2 Can. Cr. Cas. 370.

Proclamations or orders of the Governor-General, or Lieut.-Governor-in-Council: or rules, regulations or by-laws made by the Governor-in-Council in pursuance of a statute, and published in the Canada or Ontario Gazette, do not require to be proved, but are judicially noticed: Code 894; Canada Evidence Act, 1893, c. 31, s.s. 8 and 9; Ontario Evidence Act, R.S.O. c. 73, s. 25. But a cutting from the Official Gazette is not sufficient evidence: R. v. Lowe, 48 L.T. 768.

Proof of Age. - In order to prove the age of a young person for the purposes of ss. 181, 186, 210, 211, 216, 261, 269, 270, 283, 284 and 934 (a) of the Cr. Code, the following is prima facie evidence.

An entry or record by an incorporated society or its officers, having had control or care of the young person at about the time it was brought to Canada, if such entry was made before the alleged offence was committed; or in the absence, or in corroboration, of the evidence of age, the justice may infer the age from the young person's appearance: Code 701 (a) in the Criminal Code Amendment Act 1900, c. 46.

Accomplices. —Generally speaking, one competent witness is sufficient to prove all disputed facts: 3 Russell, p. 636: and also see 3 Enc. of the Laws of Eng. 447.

But in some particular cases corroborative evidence is required by statute before a conviction can be made; as in the cases of the offences mentioned in Code 684, amended by the Act of 1895, c. 40; and in others, although not expressly required by the law, it is unusual to convict without corroborative evidence; for instance, in the case of the evidence of an accomplice.

The evidence of an accomplice is receivable on either side, and a conviction upon such evidence, without any corroboration, is valid: R. v. Fellowes, 19 U.C.R. 48, followed by R. v. Andrews, 12 O.R. 184; and although the judge at the trial usually advises the jury that they ought not to convict on the totally unsupported testimony of an accomplice, still it is not necessary to the validity of the conviction that he should do so: R. v. Andrews, supra; and the jury may convict, notwithstanding such advise, if they are satisfied of the truth of the accomplice's evidence: R. v. Seddons, 16 C.P. 389; R. v. Stubbs, 7 Cox C.C. 48; R. v. Gallagher, 15 Cox 291; R. v. Beckwith, 8 C.P. 277; Re Munier, L.R. 2 Q.B. 415; 3 Russell, 636. So a justice should send a case for trial on similar evidence.

On a summary trial, however, the justice is in the place of both judge and jury; and the degree of evidence, and the credit due to the witness, is exclusively in the judgment of the justice who tries the case.

He should not convict upon the unsupported testimony of an accomplice without some satisfactory evidence going to shew the truth of the accomplice's story. There should be some fact deposed to, independently of the evidence of the accomplice, leading to the inference that the accused is implicated in the offence: R. v. Stubbs, 7 Cox, C.C. 48; see notes to 2 Can. Cr. Cas. 261; and the unconfirmed evidence of several accomplices is of no greater weight than that of one: R. v. Noakes, 5 C. & P. 326.

Corroboration.—By Code 684, 685 no person is to be "convicted" of any of the offences specially mentioned in that section upon the unsupported testimony of one witness. But this section applies only to the trial of the case at which the accused may be convicted, and does not apply to a preliminary enquiry before a justice; and the accused may be committed for trial without any corroborative evidence being given before the justice: Re Lee, 5 O.R. p. 597; Re Lazier, 30 O.R. p. 419; so also s.-s. 2 of s. 525 of the Can. Evidence Act, 1893, provides that no case shall be decided upon the evidence of a child which has been taken under s. 25 without oath, unless such evidence is corroborated: see also Code 685.

The word "decided" refers to the "final decision" or conviction (see Imp. Dict.; Nass v. Backman, 28 N.S.R. 504), and it does not refer to the preliminary enquiry before the justice upon an indictable offence; the result of the inquiry not being a "final decision," but only that there is a proper case to be sent to a higher court for decision.

The word "decided" in s. 25 (2) of the Can. Evidence Act, it is submitted, is equivalent to the word "convicted" in Code 684.

If so, the case may be sent for trial on the unsupported and unsworn statement of the child, notwithstanding s.-s. 2 of s. 25 above mentioned: see Re Lee, 5 O.R. at p. 597; Re Caldwell, 5 P.R. 217; Re Lazier, 30 O.R. 419; R. v. Peacock, R. & R. 278; R. v. Wood, 5 E. & B. 49; Ex p. Vaughan, Q.R. 2 Q.B. 114; Mould v. Williams, 5 Q.B. 469.

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But on the summary trial of a case before a justice or magistrate, such witness's statement would have to be corroborated before any conviction could be made: Can. Ev. Act, 1893, s. 25 (2).

As to what is sufficient corroborative evidence: See A. & Eng. Enc. of Law, 7th ed., p. 866; R. v. Wyse, 1 Can. Cr. Cas. 6: R. v. Conolly, 1 Can. Cr. Cas. 468; R. v. Giles, 6 C.P. 84; R. v. Vahey, 2 Can. Cr. Cas. 258, and notes; R. v. McBride, 26 O.R. 639.

Dying Declarations.—The dying declaration of a deceased person, touching the cause of his injuries, and the circumstances of, and as to who was responsible for the cause of death, may be proved, upon a charge of murder or manslaughter, by the production of a written statement taken by a justice or any other person. This is an exception to the general rule that only sworn and "first hand" evidence can be received, and it is on the ground of necessity: and that the dying person's consciousness of impending death is of such a solemn character that it is equivalent to the sanctity of an oath, and creates an obligation equal to that which is imposed by a positive oath, and so need not be on oath: R. v. Ashton, 2 Lewin, 147; R. v. Woodcock, 1 Leach, C.C. 500. R. v. Bernardotti, 11 Cox, 316; Shurla v. Freccia, 5 App. Cas. 623.

But the statement must have been such as would have been receivable on oath: R. v. Sellers, Car. Supp. 233; R. v. Jenkins, L.R. 1 C.C.R. 187.

Before evidence of the dying person's statement can be received, it must be proved that at the time it was made the deceased believed that his death was impending, and that he had not even the slightest hope of recovery: R. v. Jenkins, supra, in which a statement by the dying person that she had "at present" no hope of recovery, was held to invalidate the evidence. There must be a settled, hopeless expectation of death: R. v. McMahon, 18 O.R. 502; R. v. Mitchell, 17 Cox, C.C. 503; and that almost immediately: R. v. Osman, 15 Cox, C.C. 1; See R. v. Davidson, 1 Can. Cr. Cas. 351, in which the statement by deceased that he was shot in the body and was "going fast," was held sufficient. Even if the belief of his namediately impending death was not well founded: R. v. Whitworth, I F. & F. 382; but was the result of panic, the evidence is admissible, and the fact that the surgeon thought him likely to recover: R. v. Peel, 2 F. & F. 21; R. v. Whitworth, supra; or the fact that he subsequently entertained a hope of recovery, will not exclude his testimony: R. v. Davidson, 1 Can. Cr. Cas. 351; R. v. Hubbard, 14 Cox, C.C. 565; R. v. Taylor, 3 Cox, C.C. 84.

It is a question as to the state of mind of the deceased, at the time he made the declaration, and what his belief then was, as to his recovery: R. v. Reaney, Dears & B.C.C. 151; R. v. Morgan, 14 Cox, C.C. 337; R. v. Cleary, 2 F. & F. 850. So lapse of time between the declaration and the death is

immaterial, if it is clearly shewn that he believed himself to be hopelessly dying when he made the statement: R. v. Tinckler, 1 East, P.C. 354; R. v. Mosely, 1 Mood. C.C. 97; R. v. Bonner, 5 C. & P. 385.

In R. v. Bernardotti, 11 Cox, C.C. 316, the declaration was received, although the deceased lived for three weeks; and in R. v. Reaney, Dears & B.C.C. 151, supra, the deceased survived eleven days after making the declaration.

But it is prudent to have the statement made or replated

at as late a period as possible.

The burden of proof of the facts rendering the declaration receivable, is upon the prosecution: R. v. Jenkins, L.R. 1 CCR, 187; 20 L.T. 372; or on the accused, if the evidence is orded in his behalf, as it may be: R. v. Scaife, 1 M. & Rob. 551.

See further, R. v. Forrester, 10 Cox, C.C. 471: R. v. Goddard, 15 Cox, C.C. 7; R. v. McKay, 11 Cox, C.C. 148; R. v. Smith, 16 Cox, C.C. 170: R. v. Gloster, 16 Cox, C.C. 471; R. v. Steele, 12 Cox, C.C. 170; R. v. Whitmarsh, 62 J.P. 711 and cases cited 3 Russ. 354; Archbold, 22nd ed. 294.

A sense of danger is not sufficient: R. v. Thomas, 1 Cox, C.C. 52.

If the belief is not of almost immediate death, e.g., not on the same day, it will be insufficient: R. v. Fagent, 7 C. & P. 238; R. v. Whitworth, 1 F. & F. 382; R. v. Osman, 15 Cox, C.C. 1.

It seems that the deceased's belief in impending death will not be presumed from the nature of the wound, and that he must have known of his condition, unless accompanied by some other evidence going to shew such belief: R. v. Morgan, 14 Cox, 337; R. v. Cleary, 2 F. & F. 850; R. v. Bedingfield, 14 Cox, 341.

The declarant need not have expressed his expectation of immediate death, if it can be clearly inferred from the circumstances that he so believed: R. v. Dingler, 1 Leach, 504; R. v. Jenkins, L.R. 1 C.C.R. 187; R. v. Bonner, 6 C. & P. 386.

A dying declaration can only be received in a case of homicide, and in connection with a charge of causing the death of the deceased person, who made the statement: R v. Mead, 2 B. & C. 605; R. v. Baker, 2 M. & R. 53; R. v. Lloyd, 4 C. & P. 233; R. v. Hutchison, 2 B & C. 608; R. v. Newton, 1 F. & F. 641.

The dying declaration of a very young child, who could have no idea of a future state, is not receivable; and the declaration of a child four years old was rejected: k. v. Pike, 3 C. & P. 598.

But if the child is of sufficient intelligence to understand the solemnity of its circumstances, and expects immediate death, the evidence will be received; the evidence of a child ten years old was received: R. v. Perkins, 9 C. & P. 395.

The statements of a dying person was received although they related to the conduct of the primore towards her generally, and not to the particular act of ill-treatment: R. v. Murton, 3 F. & F. 492.

A dying declaration of an accomplice (e. g. to a case of suicide) was received in R. v. Tinckler, 1 Den. V. 6; R. v. Drummond, 1 East, P.C. 353.

The question of the admissibility of the evidence is for the judge: R. v. Woods (B.C.), 2 Can. Cr. Cas. 159; and its weight is for the jury: R. v. Smith, 18 Cox, C.C. 470; Arch. 22nd ed. 294; so both are for the justice in a summary trial.

Form and Manner of Taking Declaration.—The form of declaration is immaterial. It was held that a stateme ' of the deceased might be orally proved, even if a subsequent statement reduced to writing and signed by the deceased was not produced: R. v. Tranter, Fost. 292. But see contra R. v. Gay, 7 C. & P. 230: R. v. Trowter, 1 East, P.C. 356; and see R. v. Wallace (1898), 19 N.S.W. Rep. Laws 155.

The declaration need not be on oath. It was held that the statement might be made in answer to questions, and even leading questions: R. v. Fagent, 7 C. & P. 238; R. v. Smith, L. & C. 607.

But in more recent cases it has been decided that if the statement is reduced to writing it must be in the actual words of the deceased; if in answer to questions, the questions and answers must be proved: R. v. Mitchell, 17 Cox, C. C. 503; dissenting from R. v. Mann, 49 J.P. 743; see also R. v. Whitmarsh, 62 J.P. 680; R. v. Woodcock, 1 Leach, C.C. 502.

It need not be made before a justice; but should be so when possible: Roscoe, C.E., 10th ed. 38; R. v. Simpson, 62 J.P.

If the declaration is taken before a justice, he should take down the dying person's statement in the identical words

used; first taking down his statements as to his belief that his death is impending almost immediately, and that he has no hope of recovery; and then taking down a statement of the cause of his injuries, who inflicted them, and under what circumstances.

If practicable, the declaration should be signed by the person making it, as well as by the justice. The declaration may be taken in the absence of the accused; and even if no charge has been made against any person. But, if practicable, it is only fair to the accused that he should have an opportunity to be present, and if so, it would add to the

weight to be given to the testimony.

A statement made in the presence of the accused, but which cannot be received either as a dying declaration or as a deposition, cannot be received as an admission by the accused, unless it is shewn that the accused had the opportunity to answer or deny it, and also that he would have reasonably done so if it were untrue and did not by word or act dissent from it: R. v. Smith, 18 Cox, C.C. 470; if so, it is receivable as an admission by the accused: R. v. Steele, 12 Cox, C.C. 168.

An examination taken before a justice under the Criminal Code, but which turns out to be inadmissable as evidence, by reason of non-compliance with the requirements of the law, may be admissible as a dying declaration if the proper conditions are fulfilled: R. v. Woodcock, I Leach, C.C. 502; R. v. Woods (B.C.), 2 Can. Cr. Cas. 159.

If a written declaration is lost secondary evidence of what it contained cannot be given: R. v. Gay, 7 C. & P. 230; but see 3 Russ. 395.

As to the value to be attached to a dying declaration: see R. v. Spilsbury, 7 C. & P. 187; R. v. Ashton, 2 Lewin, C.C. 147; R. v. Reaney, Dears & B. 151.

If the evidence of the dying person can be taken on oath in the usual way under the Code in the presence of the accused, it may be so taken.

The opposite party may give evidence to explain, or contradict, or otherwise invalidate the dying declaration: Carver v. U.S., 17 S.C.U.S. 228.

The justice, in conducting a preliminary inquiry, should receive the evidence of the dying declaration, if it fairly appears that the conditions above indicated are complied

with; and ought not to scrutinize it too closely, or reject the testimony, except on the very plainest grounds; but should leave any arguable questions for the court to decide.

Statements Made in Performance of Duty.—Another exception to the rule that hearsay evidence is not admissable (R. v. Saunders (1899), I Q.B. 490) occurs in the case of evidence of a statement made by a person since deceased, orally or in writing, of a transaction done by or to him, if it is shewn that it was his duty not only to do the act but to record it, and that the record was made at the time; and if it is shewn that he had no interest in misrepresenting the facts: Smith v. Blakely, L.R. 2 Q.B. 326; The Henry Coxon, 3 P.D. 156; Massey v. Allen, 13 Ch. D. 558; Chambers v. Bernasconi, 1 C.M. & R. 347; Polini v. Gray, 12 Ch. D. 411, 5 App. Cas. 623.

And another instance is, in the case of evidence of statements made to any one by a deceased person as to his state of health. This evidence is receivable on the investigation of a charge relating to the cause of the death of the deceased person: R. v. Johnston, 2 C. & K. 354; Aveson v. Kinnaird, 6 East, 188.

Confessions.—Section 592 of the Criminal Code declares that nothing therein contained shall prevent any prosecutor from giving in evidence any admission or statement made by the person charged, which by law is evidence against him.

Any confession or statement tending to shew guilt, if it was freely and voluntarily made, is receivable in evidence; and if duly made and satisfactorily proved, is of itself, and without any corroboration, sufficient to warrant a conviction: 3 Russell, 6th ed., 478; Rogers v. Hawken, 33 LJ. 174; R. v. Eldridge, R. & R. 440; R. v. Sutcliffe, 4 Cox, C.C. 270.

But before any evidence of a confession or admission, if made to a person in authority, can be received, it must be proved affirmatively by the prosecution, that it was made without any inducement by way of promise or threat, direct or implied, or however slight: 3 Russell, 6th ed. 478; Enc. of the Laws of Eng., vol. 3, 147, 263.

The test is, whether the words import either a threat of evil or a promise of good: R. v. Jarvis, LR. 1 C.C.R. 96.

The onus is on the prosecution to satisfy the court upon these points, beyond any doubt: and if not satisfied, the

court will reject the evidence: R. v. Warringham, 2 Den. C.C. 447 (note); R. v. Thompson (1898), 2 Q.B. 12.

The ground of exclusion is, not that there is any presumption of law that a confession, not given freely, is false; but, that it having been made under a bias, it would not be safe to receive a statement made under any influence or fear: R. v. Gardner, 1 Den. C.C. 329; R. v. Thompson (1893), 2 Q.B. 12; R. v. Baldry, 2 Den. C.C. at p. 442.

And in the latter case it was pointed out, that the objection to telling a person charged with an offence that "it would be better for him to speak the truth" is, that these words import that it would be better for him to say something, thus holding out a temptation to make a false statement, into which the prisoner might fall, under the influence of the emotions thus aroused, especially in a moment of great distress.

The principles above referred to and laid down in the Warringham and Baldry cases, were affirmed in R. v. Fennell, 7 Q.B.D. 147, in which it was stated, that any sort of threat, or violence, or improper influence, direct or implied, excludes the evidence. And these cases were approved and followed by the Court of Crown Cases Reserved in an important decision in the recent case of R. v. Thompson (1893), 2 Q.B. 12; and also in R. v. Romp, 17 O.R. 567.

In R. v. Thompson, it was said, "If these principles and the reasons for them are, as it seems impossible to doubt, correct, they afford to magistrates a simple test. Is it proved satisfactorily that the confession was free and voluntary; that is, was it preceded by inducements to make a statement, held out by a person in authority? If so, and the inducement has not clearly been removed before the statement was made, evidence of it is inadmissible."

The inducement or fear, to invalidate a confession, may be by words or conduct, or both: R. v. Gillies, 11 Cox, 69, and when the confession is obtained by words or conduct, which naturally must create hope or fear, although not made in express terms, it will be excluded: Bram v. United States, 18 Supreme Court (U.S.), 183; see also R. v. Partridge, 7 C. & P. 551; R. v. Drew, 8 C. & P. 140.

If a confession is obtained by an implied threat, or by means of a false statement of fact, by a person in authority, it is not receivable. As, where a person charged with steal-

ing post letters, was induced to confess, by a false statement made, in the presence of the Post Office Inspector, that he had been seen taking the letters: R. v. McDonald, 2 Can. Crim. Cas. 221; 32 C.L.J. 783.

But it is no objection that the confession was made under a mistake in supposition of fact by the prisoner, even if some artifice, not amounting to a falsehood, was used to draw him into that supposition: R. v. Burley, cited in 3 Russell, 6th ed., $485 \, (m)$.

The inducement or threat need not be held out directly to the person accused; so if a statement, such as "It will be the right thing for him to do to make a confession," is made to a brother of the accused, or to any person likely to communicate it to the latter, the confession so obtained is not receivable. And it is immaterial in such case, whether such statement was or was not, as a matter of fact communicated by such person: R. v. Thompson (1893), 2 Q.B. 12, at p. 18.

A confession made to a person who held out no inducements or threats is nevertheless invalid, if the circumstances shew such a connection as that it appeared that the confession might really have been induced by a threat or promise: R. v. Rae, 13 Cox, 209; R. v. Doherty (1), 13 Cox, 23; R. v. Doherty (2), 13 Cox, 24; see also R. v. Gillis, 11 Cox, 96; R. v. Dingley, 1 C. & K. 637.

The requirement that it is the duty of the prosecution to prove that the confession has been duly made, was held not to be satisfied by the evidence of an interpreter that he remembered that any statement the prisoner made was voluntary; as it was not shewn that the interpreter knew what was in law a voluntary statement: R. v. Charcoal, 34 C.L.J. 210.

If the inducement has clearly been removed before the confession, and it appears that it no longer operates, the evidence is receivable: 3 Russell 495. For instance, the effect of the inducement will be considered to be removed if, after it was held out, but before the confession was made, the prisoner, upon the hearing before the committing justice, has been duly cautioned by the latter in pursuance of Code 591, and in the words there set out; and it is sufficient proof that such caution was given, that it appears on the face of the prisoner's statement returned with the depositions: R. v. Bate, 11 Cox, 686 cited, 1 Russell, p. 498 (w).

But in R. v. Finkle, 15 C.P. 453, a confession having been made under an inducement held out by the prosecutor; and, afterwards, the prisoner, after having been duly warned in the usual way, by the magistrate, made a second confession; the second confession as well as the first was rejected; the judge not being satisfied under the circumstances appearing in evidence, that the promise of favour had not continued to act on the prisoner's mind. The warning in such a case should, besides the usual caution, also include the distinct statement to the prisoner, that the first confession cannot be used against him.

A confession made to a mere stranger to the matter and not a "person in authority" is receivable, no matter what statements the latter may have made, for no hope or fear could properly, or would naturally, arise in the mind of the accused from statements by a person having no authority: R. v. Taylor, 8 C. & P. 733; R. v. Moore, 2 Den. 526. But a confession may be invalidated by an inducement held out by a person not in any authority nor connected in any way with the matter, in the presence of one who is in authority, and who does not dissent from what is said: R. v. Taylor, support; R. v. Hewett, C. & Mar. 534; R. v. Garner, 1 Den. 329; R. v. Luckhurst, 23 L.J.M.C. 18; R. v. Pountney, 7 C. & P. 302; R. v. Dunn, 4 C. & P. 543; R. v. Slaughter, ib. 544; R. v. Laughter, 2 C. & K. 225; R. v. Parker, 30 L.J.M.C. 144.

The persons in authority whose inducements will prevent the reception of confessions, include all who are in any degree engaged in the apprehension, detention, prosecution or examination of a prisoner, whether public officials or not. These are more fully designated in 3 Russell on Crimes, 6th ed. 501, and are stated to include "the prosecutor, his wife, or attorney, or a constable or her officer, or some person assisting the constable or the prosecutor in the apprehension or detention of the prisoner, or a magistrate acting in the business, or any other magistrate or magistrate's clerk, or a gaoler, or the chaplain of a gaol; or any person having authority over the prisoner, as the captain of a vessel to one of his crew, or a master or mistress to a servant, or any person in presence of one in authority, with his assent, whether direct or implied."

An Indian agent under the Indian Act, R.S.C. ch. 43, is such a "person in authority:" R. v. Charcoal (S.C.N.W.T.), 4 Can. Cr. Cas. 93. A private person left in temporary charge of the accused by the constable is a person in authority: R.

v. Enoch, 5 C. & P. 589; and so are the wife and relations of the prosecutor, the master of a servant who had stolen his property: R. v. Warringham, 2 Den. 447; R. v. Simpson, 1 Mood. C.C. 410; R. v. Upehurch, ib. 465; but see exception in R. v. Moore, 2 Den. 522, in which case the above rule was held not to apply to a case of concealment of birth by the servant.

If the confession is made after the accused was charged with the offence, and even before being taken into custody; or if he has been arrested; it will not be receivable, unless it is first proved that he was distinctly warned that he was not obliged to say anything, and that anything he says may be used against him. As to what inducements or threats will, under the rules above referred to, exclude a confession; see 3 Russell, pages 479-493.

A confession, made under the statement that "it would be better for you to tell the truth," has always been disqualified: see R. v. McDonald, 3 C.L.J. 783; R. v. Fennell, 7 Q.B.D. 147; R. v. Jarvis, L.R. 1 C.C.R. 96; R. v. Jackson (S.C.N.S.), 2 Can. Cr. Cas. 149, and cases cited; or a statement that "it would be worse" for the accused if he did not confess; or "better" for him if he did: R. v. Rose, 67 L.J.QB. 289; R. v. Jackson (N.S.) 2 Can. Cr. Cas. 149. But a mere moral exhortation to tell the truth; or any statement not directly or indirectly importing any inducement or threat, is unobjectionable: R. v. Jarvis, L. R. 1 C.C.R. 96: R. v. Sleeman, Dears, 249. As where it was said "you had better as good boys, speak the truth:" R. v. Reeve, L.R. 1 C.C.R. 362: R. v. Rowe, R. & R. 153; R. v. Gibbons, 1 C. & P. 97; R. v. Tyler, ib. 129; R. v. Clewes, 4 C. & P. 221; but an admonition by the constable that the prisoner "had better not add a lie to the theft," excluded the confession in R. v. Sheppard, 7 C. & P. 579.

The inducement must be some hope of benefit or threat of disadvantage, in relation to the offence charged, or its consequences. For instance, a promise to take off the handcuffs if the prisoner will confess, is not such an inducement: R. v. Green, 6 C. & P. 655; nor a promise to give liquor to the accused: R. v. Sexton, 3 Russ. C. & M. 462; and it is said that even making the accused drunk, will not exclude the confession; but it will be a matter of observation by the judge to the jury: R. v. Spillsbury, 7 C. & P. 187. A threat to send for a constable unless the accused confesses will

exclude the confession, but a promise to let the accused see his wife if he will confess, is not an inducement which will exclude the confession: R. v. Lloyd, 6 C. & P. 398.

The inducement must be as to some temporal benefit, and not such as is referable only to a future state: R. v. Gilham, 1 Mood. C.C. 186; R. v. Wild, 1 Mood. C.C. 452; R. v. Sleeman, Dears, 249. If it plainly appears that any threat or promise made did not affect the prisoner's mind in making the confession, but that, notwithstanding, it was entirely voluntary, the confession will be received in evidence: R. v. Thompson (1898), 2 Q.B. 12.

The statement made by an informer in expectation of turning Queen's evidence is not admissable afterwards on his refusing to prosecute: R. v. Gillis, 11 Cox, C.C. 69.

Although a confession may be invalidated by an inducement or threat, yet the subsequent acts of the accused, or anything discovered as a result of the confession, may be given in evidence. For instance, where the stolen property was found in the prisoner's apartments in consequence of a confession improperly obtained, the fact of the finding, but not the confession, was received in evidence. And so much of the confession as relates strictly to the fact or thing discovered, and what the prisoner says, at the time of doing any act after the confession are receivable: 3 Russell 521.

A letter referred to in the defendant's confession may be read as part of the subject matter of it: R. v. Attwood, 20 O.R. 574.

Evidence of a statement by the prisoner's counsel at a previous trial, made on behalf of the prisoner, was admitted as evidence against him: R. v. Bedere, 21 O.R. 189.

What a person is overheard to say to another, or even to himself, is evidence against him; but must be accepted with reserve as being very apt to be misconstrued by the person who overheard it: R. v. Simons, 6 C. & P. 540.

A statement made by a third person in the prisoner's presence and not denied by him, is some evidence against him, even if some inducement was held out to the third person to make it; but such evidence is of very little weight: R. v. Janouski, 10 Cox, C.C. 365, unless the conduct of the accused, when such statements were made in his presence, clearly indicated his assent to what was so stated. But before such statements can be received, it must be clearly shewn that the

accused had the opportunity to deny them if he chose to do so, and that the circumstances were such that he naturally would have done so if they were untrue, and that, by his conduct, he appeared to acquiesce in them: R. v. Smith, 18 Cox, 470; R. v. Steele, 12 Cox, C.C. 168; see also R. v. Mallory, 13 Q.B.D. 33.

Upon a preliminary inquiry, evidence of a confession or statement by the accused should be received by the justice, if there is any evidence at all of its having been properly made and not unduly obtained, leaving the question of its sufficiency or validity to the court. But on a summary trial the justice must, of course, adjudicate upon it, as the court would do on a trial.

Statements or confessions made to police officers, whether before or after the accused has been arrested or charged, are receivable as evidence, although they were elicited by questions put by the officer. A person suspected of crime may be questioned by an officer before arrest, without being cautioned, and what he says is receivable in evidence against him. After arrest the statements so obtained are generally considered to be receivable in evidence if the court is fully satisfied that they were not obtained by any undue or improver means: R. v. Day, 20 O.R. 209.

This case was followed by the Appellate Court of Quebec in R. v. Viau, Q.R. 7 Q.B. 362. See also R. v. Elliott, 31 O.R. 14; 3 Can. Cr. Cas. 95.

There has been and is a divergence of judicial opinion both in England and in Ontario upon the question, some judges refusing to receive such evidence, and the practise of so obtaining confessions has been strongly reprobated: and an eminent English judge in a recent case, while receiving the evidence as valid, threatened to have the officer who had made it a practise, dismissed from office: R. v. Brackenbury, 17 Cox, C.C. 628.

There is no positive rule excluding evidence of admissions made by the accused in an wer to questions by a police officer, either after arrest or (a fortiori) before arrest. Admissions so received were allowed in evidence in R. v. Brackenbury, supra (1893), and notes to same case. In which case R. v. Gavin, 16 Cox, C.C. 656 was overruled.

The question of the admissibility of evidence so obtained must be determined with reference to all the circumstances of

each particular case: R. v. Miller, 18 Cox, C.C. 54, and as decided in R. v. Day, 20 O.R. 209, it is receivable; but only so if it is clearly shewn to the entire satisfaction of the court that the admission so made was not obtained by any undue or improper means: see notes in 1 Can. Cr. Cas. 398; see also R. v. Goddard, 16 J.P. 491, per Cave, J.; R. v. Coley, 10 Cox, C.C. 536; R. v. Reason, 12 Cox, C.C. 228; R. v. Bodkin, 9 Cox, C.C. 403; R. v. Thornton, 1 Moo. C.C. 27: R. v. Kerr, 8 C. & P. 177; R. v. Jones, 12 Cox, C.C. 241; R. v. Male, 17 Cox, C.C. 689: R. v. Hirst, 18 Cox, C.C. 374. Where the prisoner awaiting trial in prison was questioned by a constable without being cautioned, and the court was of opinion that the questions were put with the object of entrapping him, the answers were held inadmissible: R. v. Histed, 19 Cox, C.C. 16.

Privileged Communications.—The rule that voluntary statements made by the accused are admissible as evidence against him is subject to the following exceptions:

1. Communications between a client and his solicitor or counsel, bona fide communicated in professional confidence. These are considered, as a matter of public policy, sacred and inviolable; and are not only absolutely privileged, but the solicitor is prohibited from divulging them, not only during the continuance of the relation of solicitor and client, but for all time: Cleave v. Jones, 7 Exch. 421; R. v. Cox, 14 Q.B.D. 153; if they were professional and made in a professional character: Hamelyn v. White, 6 P.R. 143, per Strong, J.: Gardner v. Irvin, 4 Ex. D. 49; O'Shea v. Wood (1891), P. 286; and even if no legal proceedings were existing, or in contemplation: Minet v. Morgan, I.R. 8 Ch. App. 361; see also, Hoffman v. Crerar, 17 P.R. 404; McBride v. Hamilton Prov., 29 O.R. 161.

This privilege is limited, however, to communications made to counsel and solicitors, and it appears that no privilege appertains to communications made to a priest or clergyman: Broad v. Pitt, 3 C. & P. 518; R. v. Griffin, 6 Cox, C.C. 219; R. v. Hay, 2 F. & F. 4; R. v. Gilham, 1 Mood. C.C. 186. But the court will not compel a clergyman to disclose communications made to him in the confessional, if he refuses to divulge, although the evidence will be received if the clergyman chooses to disclose it: Broad v. Pitt, 3 C. & P. 518; R. v. Griffin, 6 Cox, C.C. 219; R. v. Hay, 2 F. & F. 4.

The privilege extends, not only to a solicitor, but to an interpreter (re De Barre v. Leverett, 4 T.R. 756) or an agent (Parkins v. Hawkshaw, 2 Stark, 239), between the solicitor and his client; and to the solicitor's clerk; Taylor v. Forester, 2 C. & P. 195. But the privilege does not extend to a person who is not acting as a solicitor, although he is one by profession, and may have received the communication in confidence: Rudd v. Frank, 17 O.R. 758; Wilson v. Rastall, 4 T.R. 753; nor to a conveyancer, 4 Atk. 525. And communications not made to the solicitor alone, or which were not intended to be kept solely to himself are not privileged. So a letter written by a solicitor for his client is not inadmissible on the ground of privilege: R. v. Doroner, 14 Cox, C.C. 486. It extends, however, to communications between the town and city solicitors of the party: Reid v. Langlois, 1 MacN. & G. 627. A solicitor who puts his name to a deed as a witness, is bound to disclose all that passed at the time, relating to its execution: Robson v. Kemp, 4 Esp. 233; 5 Esp. 52; Crawcour v. Salter, 18 Ch. D. 30: McGee v. The Queen, 3 Can. Exch. Ct. R. 304: and he may be called to prove his client's handwriting to a bail bond witnessed by the solicitor: Hurd v. Moring,

The privilege does not extend to illegal transactions; and a communication made to a legal adviser in furtherance of an illegal purpose, as in the case of a solicitor being consulted previous to an offence being committed, in regard to the best means of committing it, is not privileged: R. v. Cox, 14 Q.B.D. 53: Williams v. Quebrada Rail. Co. (1895), 2 Ch. 751, and it only so, but it is the duty of a solicitor to immediately inform the authorities of any intention to commit crime divulged to him by a person consulting him as a solicitor: Annesley v. Anglesea, 17 Howard's State Trials, 1139, cited in 3 Russell, 6th ed. p. 587.

No privilege attaches to telegrams in the possession of a telegraph company. The Dominion Statute does not give any absolute privilege: Re Dwight and Macklan, 15 O.R. 148.

And a bank has no privilege in regard to a customer's account beyond what is provided by s. 46 of the Banking Act, 53 Vict., c. 31, which only prohibits voluntary disclosures as to customer's account: Hannum v. McRae, 18 P.R. 185; following the principle in Re Dwight and Macklan, suprat.

A communication of a patient to his physician is not privileged: Wilson v. Restall, 4 T.R. 753.

Admissions in Depositions.—Analogous to evidence of a confession, or voluntary statement above mentioned, is that of a statement made by the accused in his depositions on a prior examination; e.g., before the coroner, or in any previous proceeding, civil or criminal. And the sworn depositions of a prisoner, made by him before a justice in a prosecution against another party, in connection with the same offence, are receivable as evidence against the former: the rule of law excluding the statement of a prisoner under examination before a justice on a preliminary inquiry, if sworn to, and so not taken in the manner provided by s. 591 of the Cr. Code, only applies when the charge is against himself: R. v. Field, 1d C.P. 98.

Prior to the Causda Evidence Act, 1893, a witness could not be compelled to answer questions which would tend to incriminate himself if he objected and claimed the privilege or right not to answer on that ground. But, as already mentioned, s. 5 of the Act referred to, provided that a witness was not to be excused from answering questions on the ground that the answer might tend to incriminate himself, but that the evidence so given could not be used against the witness afterwards, except in a prosecution for perjury in giving it. And it was held that, under this section of the Act, the witness's statements were not afterwards admissable against himself, even if he had not objected or claimed privilege: R. v. Williams, 28 O.R. 678, over-ruling R. v. Hendershott, 26 O.R. 678, which decided to the contrary, but which was afterwards followed (over-ruling R. v. Williams) in R. v. Hammond, 29 O.R. 211. The statute of 1893, s. 5, was amended in 1898 by 61 Vict., c. 53, s. 1. To settle the above point a new section was substituted, providing that the witness is not to be excused from answering incriminating questions; but that his evidence is not to be used against him afterwards, if he objected and claimed privilege at the time.

The Canada Evidence Act, 1893, s. 5, and amendment of 1898, apply only to cases brought under Dominion laws, and proceedings over which the Parliament of Canada has jurisdiction: 56 Vict., c. 31, s. 2 (Dom.); and they do not apply to proceedings founded on statutes of the Ontario Legislature, which, as pointed out at pages 106, 107 ante, has the

power to regulate the giving of evidence in cases for infractions of its own laws: R. v. Douglas, 1 Can. Cr. Cas. 221.

The Ontario Legislature, by the Ontario Evidence Act, R.S.O. c. 73, s. 5, has retained the common law principle above alluded to, and under its provisions, a witness (except as provided in s. 9, with reference to the defendant or the wife or husband) can not be compelled to answer any question tending to criminate himself, if he objects or claims privilege

In regard to the question of the reception afterwards, of statements in the depositions of a witness as evidence on a criminal prosecution against himself, the rule is this: if the witness did not claim privilege, when he was giving his evidence, but answered voluntarily, then whether the charge against him is under Dominion or Ontario law, the evidence he previously gave in any court or place, in any proceeding, civil or criminal, will, notwithstanding s. 5 of the Canada Evidence Act, be receivable as a voluntary statement made by There is no difference between a voluntary statement made in court, and one made anywhere else: R. v. Garbett, 1 Den. C.C. 236; R. v. Madden L.T. 505; R. v. Coote, L.R. 4 P.C. 599; 9 Moo. P.C. N.S. 463. The same rule will apply although the evidence previously given by the accused was in a civil proceeding under a provincial law, and although it was given compulsorily; unless he claimed privilege, it will be received against him: R. v. Douglas, supra.

But if the proceedings in which the witness gave his evidence, shew that he objected or claimed privilege, the depositions will not be receivable as evidence against him, except on a prosecution for perjury in giving such evidence.

A coroner's court is a criminal court within the jurisdiction of the Dominion Parliament, and a witness there is bound to answer incriminating questions; and if he does not claim vivilege, his evidence may afterwards be used against him; but if he objects, it cannot be so used. The same rule applies in regard to the reception of statements made in evidence taken in proceedings before the Exchequer Court of Canada: R. v. Connelly, 25 O.R. 151.

And the statements made by a witness before a committee of the House of Commons, may be used on a subsequent charge against himself; but only if the House so orders. The only protection the witness has in that case, is the protection

from the use of the evidence without the consent of the House: R. v. Connelly, 22 O.R. p. 229; and see R. v. Merceron, 2 Stark. N.P. 366.

The original depositions of the witness are the best evidence of what his statements were, and must be produced. But if they have been lost, or have not been so taken as to be used in evidence, the statements may be proved by parol; and the person who took down the notes of the evidence may be such witness, and may refer to the notes of evidence to refresh his memory: R. v. Erdheim (1896), 2 Q.B. 260; R. v. Troop (N.S.), 2 Can. Cr. Cas. 22. So, in cross-examination, a witness's former deposition may be read, to contradict him, if it was duly taken, and is a verbatim record; but not if the document called a deposition contains mere notes of the evidence and not what the witness has said: R. v. Ciarlo, 1 Can. Cr. Cas. 157; R. v. Graham, 1 Can. Cr. Cas. 388; as to the sufficiency of the depositions in this respect see Code 683, 687, as amended by Act of 1900, and Code 689; Jervis on Coroners, p. 219. Depositions of a witness, speaking in French and taken down in English, are not admissible to contradict him on a subsequent proceeding: R. v. Ciarlo, supra.

A grand juryman, or a constable who was in attendance upon the grand jury, may be called, at the instance of the Crown, to prove statements made by a witness before such jury; the privilege of secrecy being, in such a case, a matter which the Crown may waive, if in the public interest: 3 Russell, 595.

Evidence must be given identifying the accused, as being the person whose depositions are offered in evidence against him; and evidence by the sheriff's officer that he believed him to be the same person, although he couldn't speak positively, is sufficient prima facie proof: R. v. Douglas, I Can. Cr. Cas. 221. And in a prosecution for a second offence under the Liquor License Act, proof of identity of the defendant must be given apart from the certificate of the fermer conviction: R. v. Herrell, I Can. Ci. Cas. 514.

Section 138 of the Cr. Code provides that wilful disobedience of any Act of any provincial legislature is an offence under the Cr. Code of Canada, and punishable with one year's imprisonment, unless some penalty or other mode of punishment, is expressly provided. A prosecution under the above s. 138 of the Cr. Code, for an offence against a Provincial statute, would be "a matter respecting which the Dominion Parliament has jurisdiction to regulate the evidence:" Can. Evidence Act, 1893, s. 2.

But if the Provincial law provides a penalty or mode of punishment for its infraction, the proceeding must be in accordance with it, and there would be no authority to proceed under Code 138.

Subject to the provisions of the Canada Evidence Act, and other Dominion statutes, the laws of evidence in force in the various Provinces apply to criminal proceedings taken in them: see R. v. Garneau (Q.B. Que.), 4 Can. Cr. Cas. 69, and notes.

In civil actions based on criminal proceedings under Dominion laws, the law of evidence of the Provinces will apply, and not the Canada Evidence Act: O'Neil v. Atty.-Gen., 2 Can. Cr. Cas. 308.

CHAPTER VII.

THE JUSTICE OR MAGISTRATE.

Appointment and Qualification.—By the British North America Act, s. 92, s.-s. 14, the administration of justice, and the constitution, organization and maintenance of provincial courts, including the prerogative right of the Crown to appoint the officers (except judges, whose appointment is specially excepted by s. 96), is conferred upon the provincial legislatures. Under this provision the Ontario Legislature has the exclusive power to pass statutes authorizing the appointment of justices and magistrates: R. v. Bennett, 1 O.R. 445; R. v. McAuley, 14 O.R. 643; R. v. Bush, 15 O.R. 398; R v. Lee, 15 O.R. 353.

Justices of the peace receive their appointment by Royal commission, under the Great Seal of the Province: R.S.O.

Police magistrates and their deputies are appointed under R.S.O. c. 87, and stipendiary magistrates, in unorganized districts, under R.S.O. c. 109, s. 37. Justices of the peace for such districts may also be appointed under R.S.O. c. 109, s. 45. County Police Magistrates may be appointed by R.S.O. c. 87, s. 15.

Ex officio Justices.—Certain officials are also justices by virtue of and while holding their official positions: e.g., a police magistrate for part of a county is ex officio a justice for the whole county, and has the powers of two justices: R.S.O. c. 87, ss. 27 and 30. He is, however, not obliged to act as a justice outside his own territorial jurisdiction as police magistrate, unless he sees fit: s. 35.

The "head" of every municipal council, viz., the warden of a county, mayor of a city or town, reeve of a village or township (R.S.O. c. 223, ss. 278, 473), also county councillors (R.S.O. c. 223, s. 473), are ex officio justices for the county. And aldermen in cities are justices of the peace for such cities: R.S.O. c. 223, s. 273.

Special Justices.—As to the magisterial powers of reeves in municipalities or unorganized districts, see R.S.O. c. 225, s.

30, (the co-liftcation of 52 Vict. (Ont.), c. 37, s. 4); see R v. McGowan, 22 O.R. 497.

Returning officers, and their deputies, in elections, are also given certain powers of justices by the Dominion Elections Act, R.S.O. c. 8, s. 73; the Ontario Elections Act, R.S.O. c. 9, ss. 147-149; the Municipal Act, relating to municipal elections and voting on by-laws: R.S.O. c. 223, ss. 109-110 and the Canada Temperance Act, R.S.O. c. 106, s. 65.

Provincial game wardens are empowered to try all offences against the Ontario Game Laws: R.S.O. c. 287, s. 22; also the following: Crown timber agents and wood or fire rangers: R.S.O. c. 267, s. 16; fisheries overseers: R.S.O. c. 288, s. 42; commissioners of police: R.S.C. c. 184, s. 1; Indian agents: 57 & 58 Vict., c. 32, s. 8 (Dom.); Quarantine officers: R.S.C. c. 68, s. 5. Judges of the Supreme and Exchequer Courts of Canada, and of the Superior Courts of Ontario: R.S.O. c. 86, s. 1, are ex officio justices.

Officers Prohibited from Acting as Justices.—Sheriffs, coroners, and practising solicitors are prohibited from acting as justices: R.S.O. c. 86, ss. 7, 8.

But a police magistrate or deputy (except for a city of more than thirty thousand inhabitants: R.S.O. c. 87, s 36 (2)) may practice as a barrister or solicitor in other than criminal matters, or those which may be brought before him as a magistrate: R.S.O. c. 87, s. 36; and he may act as an ex officio justice: Richardson v. Ransome, 10 O.R. 387.

Property Qualification.—The property qualification required to be held by a justice (other than for an unorganized district, who requires no property qualification: R.S.O. c. 109, s. 45) is the actual possession of real estate (legal or equitable, see Crandall v. Nott, 30 C.P. 63) as owner, tenant for life, or for 21 years, of at least the value of \$1,200 over and above encumbrances: R.S.O. c. 86, s. 9.

The justice's interest in the real estate need not be worth \$1,200; a life estate, or lease for 21 years in that amount of real property, is sufficient, even if such life estate or lease is not worth that amount: Fraser v. McKenzie, 28 U.C.R. 255; Weir v. Smith, 19 A.R. p. 433; and an estate as tenant by the curtesy in the property of a deceased wife, such property being of the value of \$1,200, is sufficient: Weir v. Smith, 19 A.R. 433.

Upon the question of value, see Weir v. Smith, supra; Squier v. Wilson, 15 C.P. 284.

The property will be a sufficient qualification, even if it was purchased with trust funds, under circumstances which would make the justice liable in equity to be declared only a trustee of the property: Jones v. Edwards, 2 Jor. 519. police magistrate is not required to possess any property qualification: R.S.O. c. 87, s. 38; nor are ex officio justices, as such: R.S.O. c. 223, s. 475; but they cannot act as justices before taking the oath of the office by virtue of which they are such justices: R. v. Boyle, 4 P.R. 256.

Oaths .- A justice must, within three months from the date of the commission appointing him, take the oaths (or affirmations: see R.S.O. c. 86, s. 12, and Dom. St., 1893, c. 31, s. 124), of property qualification, allegiance, and of office, according to the form given in s. 10, R.S.O. c. 86; the oath of office in s. 11 of the same statute; and the following oath of allegiance: R.S.C. c. 112, a. 1:

FORM OF OATH OF ALLEGIANCE.

I, A.B., do sincerely promise and swear that I will be faithful and bear true allegiance to His Majesty, King Edward the Seventh (or the reigning sovereign for the time being), as lawful Sovereign of the United Kingdom of Great Britain and Ireland, and of this Dominion of Canada, dependent on and belongiant to the relationship. dependent on and belonging to the said Kingdom, and that I will defend Him to the utmost of my power against all traitorous conspiracies or attempts whatsoever which shall be made against His person, Crown and Dignity, and that I will do my utmost endeavour to disclose and make known to His Majesty, his heirs or successors, all treeson or traitorous conspiracies and attempts which I shall know to be against Him, or any of them. And all this I do swear without any equivocation, mental evasion, or secret reservation,

So help me God.

A.B.

this

Sworn and subscribed by said A.B. , A.D. 19 day of

before me at

C.D., a Justice of the Peace,

for the County of or a Commissioner, etc., or a Clerk of the Peace, for the County of

Unless the justice takes these oaths within three months, his commission is deemed absolutely revoked: R.S.O. c. 86, s. 12.

The above oaths or affirmations may be taken before a judge, or another justice, or a commissioner for taking affidavits, or the clerk of the peace, and must be in writing and forthwith transmitted to the latter officer to be filed: R.S.O. c. 86, ss. 10, 13; with a fee of 25 cents for filing each oath: R.S.O. c. 101, Tariff, item, 58.

A justice who took the oaths under a former commission is not required to do so again under a new commission; but whether acting under a new or old commission, he must take a new oath of qualification, if he has in any way parted with the particular property upon which he formerly qualified: R.S.O. c. 86, s. 15.

Police Magistrates.—A police magistrate or deputy is only required to take the oaths, (or affirmations) of office, (form in s. 31 of R.S.O. c. 87), and of allegiance, (form supra), R.S.O. c. 87, ss. 11, 31, 32.

All judicial officers are required to take both of these oaths, but an ex officio justice is not required to take any oaths as such: R.S.O. c. 223, s. 475.

Game wardens and commissioners are only required to take the oath given in R.S.O. c. 287, s. 22, (2 and 3), before acting as justices.

A justice who acts without taking the above oath of property qualification, is liable to a penalty of \$100 for each time he so acts: R.S.O. c. 86, s. 16; and may be prosecuted by indictment: Margate v. Hannem, 3 B. & Ald. 266.

Justices De Facto and De Jure.—The failure of a justice or police magistrate or deputy, to take the required oaths, does not necessarily invalidate his acts, and will not do so, if his authority is not objected to on that ground, at the time he acts. This is on the ground that, although not an officer de jure unless he has taken the oaths, still he is a de facto officer; and unless his right to act is challenged at the time, his action is not void: Ex p. Mainville, 1 Can. Cr. Cas. 528; Ex p. Curry, 1 Can. Cr. Cas. 532; R. v. Hodgens, 12 O.R. 367; O'Neill v. Attorney-General, 1 Can. Cr. Cas. 313; 26 S.C.R. 122.

The difference between an officer de jure and one de facto, is that the former has the lawful right and title to the office and has done everything necessary to make himself a good officer in point of law; while an officer de facto is one who has the possession and performs the duties of the office under

colour of right, by appointment, and has the public reputation of being the officer, without being actually qualified by law, by reason of the omission of some precedent act, such as the taking of the oaths, or some defect in his appointment: R. v. Bedford, 6 East, 356; Parker v. Kett., 1 Lord Ray, 658, 19 A. & E. Ency. 394; see also Wilcox v. Smith, 5 Wend., (N.Y.) 231.

The action of a justice who has not sufficient property qualification, or who has not taken the oath of qualification, and other oaths required, is not, therefore, invalid: Margate v. Hannem, 3 B. & Ald. 266.

The presumption of law is in favour of the right of the person acting: R. v. Jones, 2 Camp. 131; Gordon's case, 1 Lesch, 581; Berryman v. Wise, 4 T.R. 366; until such presumption is rebutted: R. v. Verelst, 3 Camp. 432; R. v. Fearman, 22 O.R. 456; R. v. Excell, 20 O.R. 633; R. v. Fee, 3 O.R. 107; Smith v. Redford, 12 Gr. 316; School Trustees v. Neil, 28 Gr. 408; R. v. Hodge, 23, O.R. 450; cases cited Taylor on Evidence, 8th ed., p. 187.

If objected to at the time, the officer who has not qualified, (not being an officer de jure, and his right being challenged), he has no jurisdiction, and his acts are void: Re Chapman and London, 19 O.R. 33; and the accused will be released on habeas corpus, if taken into custody under a warrant issued by such officer: Ex p. Curry, 1 Can. Cr. Cas. 532; or the proceedings will be quashed on application to the High Court.

But the acts of a mere usurper or intruder who has no colour of title, by election or appointment to the office, are utterly void: cases above cited; Fletchburg v. Grand Junction Ry., 1 Allen (Mass.) 552.

If an officer is one de facto and not a mere intruder, for instance, an officer who continues to exercise his functions after his term has expired; or an officer acting as deputy or delegate to a delegate; or one who has failed to take oath of office; or if his appointment is invalid; or if it turns out that he has not been appointed by the proper and lawful authority, and if he has some colour of right to the office, his acts are valid, unless objected to at the time, as regards all persons other than the holder of the real legal title to the office: O'Neill v. Atty.-Gen., 1 Can. Cr. Cas. 303; Turtle v. Euphemia, per Meredith, J., 31 O.R. 404; Speers v. Speers, 28 O.R. 188;

Atty.-Gen. v. Bertrand, L.R. 1 P.C. 520; and see R. v. Gibson, 8 Can. Cr. Cas. 454, 465.

The above rules apply to a judicial, and, a fortiori, to a ministerial officer: O'Neill v. Atty.-Gen., supra.

See also McInstry v. Tanner, 9 Johns, (N.Y.) 135; McGraw v. Williams, 33 Grattan, (Vir.) 510; Woodside v. Wagg, 71 Me. 207; Re Ah. Lee, 6 Sawyer, (U.S.C.C.) 410, and the cases there cited, as to officers acting de facto and de jure.

A recital in a conviction that it was signed within the justice's county cannot be controverted, the conviction being conclusive of all the facts stated therein: Langwith v. Dawson, 30 C.P. 375.

CHAPTER VIII.

GENERAL AUTHORITY OF JUSTICES AND MAGISTRATES.

The jurisdiction of a justice or magistrate is derived from:

1. The statutes authorizing hisappointment and regulating his authority;

2. The terms of his commission, which defines his terri-

torial jurisdiction;

3. The various statutes of the Dominion parliament and of the provincial legislature, as well as the statute and common law of England, which was introduced into Canada by its first Constitution; and such Imperial statutes passed since then, as are in force in Canada, under s. 5 of the Cr. Code, namely, those which are expressly made applicable to Canada. Statutes of the Dominion, or provincial legislatures, which are repugnant to the provisions of any Imperial statute in force in Canada, are void to the extent of such repugnancy only: 28-29 Vict. (Imp.) c. 63.

Municipalities, by R.S.O. c. 223, s. 476; License Commissioners, under R.S.O. c. 245, s. 4; Police Commissioners, under R.S.O. c. 223, s. 484; Boards of Health, under R.S.O., c. 248, and other bodies authorized by statute, may pass by-laws or regulations, and impose penalties for the infraction of the same,

all of which come under the jurisdiction of justices.

The jurisdiction of justices is limited to that which is expressly conferred by (R. v. Carter, 5 O.R. 567) or necessarily implied (Cullen v. Trimble, L.R. 7 Q.B. 416) from some statute.

But where, by any law, authority is given to any officer to do any act, all appropriate and necessary powers to enforce such order are assumed to be also given, though not expressed: R.S.C. c. 1, s. 7 (37); R.S.O. c. 1, s. 8 (22).

The Cr. Code does not supersede all previous provisions of the Cr. law, whether statutory or at common law. Only those statutes are repealed by it which are referred to in Code 981: R. v. Spooner, (Divl. Ct., Ont.), 27 Dec. 1900. Those not expressly repealed are given in the appendix to Cr. Code 983 (3), and the latter do not include all of those unrepealed by the Criminal Code.

Judicial and Ministerial Acts. A justice can only perform judicial acts within the limits of his territorial jurisdiction, as defined by his commission; but he may do merely ministerial acts anywhere: Paley on Convictions of head, 17; R. v. Beemer, 15 O.R. 266; Langwith v. Dawson and P 275

The difference between a judicial and a min deput set is that in the former the justice man exercise that it is the power, while in the latter he cannot do a Stave con a Ashburton, 4 E. & B. 526; Paley, 6th ed. 11 motern).

The following are examples of judicial acts, vi. — Admitting to bail: Linford v. Fitzroy, 13 Q.B. 240. taxing cests R. v. Cambridge Recorder, 8 E. & B. 637; taking evidence, making remands, hearing and adjudicating on the case: R. v. Benn, 6 T.R. 198; see also Harper v. Carr, 7 T.R. 276. Painter v. Liverpool, 3 A. & E. 433; Skingley v. Sarridge, 11 M. & W. 503; Paley, 6th ed., 19.

The following are ministerial acts which may be done anywhere, viz:—Taking information; issuing certificate of dismissal: Handcock v. Summers, 28 LJ.M.C. 196; Costar v. Hetherington, 28 LJ.M.C. 198; Paley, p. 20 (note m); "Backing" a warrant: Clark v. Woods, 2 Exch. 395; R. v. Kynaston, 1 East, 117; Dews v. Reilly, 11 C.B. 434; issuing a distress warrant or commitment: R. v. Fleming, 27 O.R. 122.

When justices not to Intervene.—A justice cannot act in any matter arising in a city or town for which there is a police magistrate, except upon the request, illness or absence of the latter; nor can he take any part in any case before a police magistrate without the latter's request: R.S.O. c. 87, ss. 7, 17, 22. But this does not apply to a proceeding on a charge against the police magistrate himself: R. v. Chipman, 1 Can. Cr. Cas. 81.

A justice for the county may, in any case arising in the county outside the city or town, adjudicate while sitting in such city or town, although there is a police magistrate there, e.g., Wentworth cases in Hamilton. He may act within the city, but not for it: R.S.O. c. 87, s. 27; Langwith v. Dawson, 30 C.P. p. 379; R. v. Riley, 12 P.R. 98; R. v. Clark, 15 O.R. 49; R. v. Lee, 15 O.R. 353.

And a police magistrate for a town may, as an ex officio justice for the county, try in another town, for which there is another police magistrate, an offence committed in another

part of the county: per MacDougall, Co. J.; R. v. McLean, 3 Can. Cr. Cas. 323, in which the cases are fully cited and discussed; see also R. v. Gully, 21 O.R. 219.

When a justice acts for a police magistrate the former has no greater power than a justice of the peace; but two justices acting together at the magistrate's request, have all his jurisdiction: R.S.O. c. 87, s. 29.

A justice, or justices, acting for a police magistrate, must be designated in the proceedings as so acting, and at his request, or absence, or illness, otherwise the process will be invalid; and describing the justice merely as a justice, or as police magistrate, is not sufficient: R. v. Lyons, 2 Can. Cr. Cas. 218; but see R. v. Hodge, 23 O.R. 450; and see R. v. Duggan, 21 C.L.T. 35, in which it was also held, per Macdougall, Co. J., that where the conviction contained the proper recital, it was not necessary that the information should be sworn before the magistrate who tried the case.

A justice cannot intervene in a case already in the hands of another justice, without the latter's consent: R. v. McRae, 28 O.R. 569; R. v. Stansbury, 4 T.R. 456. But at the request of a summoning justice others may, either with him or separately from him, hear the case.

All of the justices, who adjudicate upon the case, must have heard the whole of the evidence; and if, after part of it has been taken, before one or more justices, another intervenes, and all of them adjudicate, the conviction or commitment will be invalid, unless the case was begun de novo before them all: Re Guerin, 16 Cox C.C. 596; Re Nunn, 2 Can. Cr. Cas. 429 (Sup. Ct. B.C.).

According to these decisions, ss. 586 and 588 and form P to the Cr. Code, providing for the accused being brought up on remand before the same or any other justice, are to be construed as providing only for the case of the first justice dying or resigning, after a case has been begun before him, and not finished; and even in such case another justice, upon taking up the matter, should take the evidence again.

Several justices may sit together, and in such an event the justice who issued the summons, has no greater authority than the others, and the majority governs; and when the Bench is equally divided there is no decision: Kumis v. Graves, 57 LT. (Q.B.) 583.

CHAPTER IX.

DISQUALIFICATION AND OUSTER OF JURISDICTION.

Disqualification by Interest.—The authority of a justice is ousted if he is a party to, or has any pecuniary interest whatever in the case, direct or indirect, no matter how small; or if he has any substantial interest, not pecuniary: R. v. Farrant, 20 Q.B.D. 58.

In either of such circumstances he would be both prosecutor (or defendant) and judge; and it is contrary to natural justice that a justice of the peace, who is a promoter of the prosecution, or who has any interest in the matter, or who is biased, should sit magisterially in it: R. v. Sproule, 14 O.R. 381; R. v. Rand, 35 L.J.M.C. 157; R. v. Chapman, 1 O.R. 582; Leeson v. Medical Council, 43 Ch. D. 384, and he will be restrained by prohibition if he attempts to do so: Hutton v. Fowke, 1 Rep. 648; Anon. 1 Salk. 396, and any proceedings taken by him may be quashed, and the court will even punish him by attachment: Hereford's case, 2 Ld. Raym. 766.

Relationship.—Near relationship between the justice and either party invalidates his authority; such as one of the parties being a daughter of the justice: R. v. Langford, 15 O.R. 52; or his servant: Gallant v. Young, 11 C.L.T. 217; or if the prosecutor who would be entitled to a share of the fine is the justice's father: R. v. Steele, 26 O.R. 540.

The affinity of husbands of an aunt and niece, was held to be such as to disqualify a judge from sitting in a case in which the other was interested: State v. Wall (Fla.), 49 L.R.A. 548; 19 C.L.T. 21.

But the fact that the prosecutor (acting as a public official and not entitled to any share in the fine) and the justice, had married sisters, was held not to disqualify the justice: R. v. Major, 33 C.L.J. 162.

In a case where a civil action was pending, at the suit of the husband of the defendant against the justice, for misconduct in his office, the justice was held disqualified: Ex p. Gallagher, 33 C.L.J. 547.

A justice who is a shareholder in a railway company is disqualified from convicting a person for travelling on the

railway without a ticket: R. v. Hammond, 9 L.T. 423; and justices who are members of any limited class of privileged persons cannot adjudicate on a prosecution for infringement of their exclusive rights: R. v. Huggins (1895), 1 Q.B. 563; see also cases cited in Leeson v. Medical Council, 43 Ch. D. 366.

The fact that a justice was nominally an honorary member of a society, to the funds of which he had contributed a small sum, and that an officer of such society was the prosecutor, was held not to disqualify the justice: R. v. Herrill, 1 Can. Cr. Cas. 510; nor the fact that the justice was a rate-payer of a town into whose treatury the fine would be payable: Ex p. Gorman, 34 C.L.J. 175; nor the fact that the justice was license inspector for an adjoining district: Ex p. Michaud, 34 N.B.R. 123; 32 C.L.J. 479; nor that the justice was a member of the town council, and, as such, had taken part in passing the by-law which defendant was accused of breaking: R. v. Huntington (Jus.), 4 Q.B.D. 522; see also R. v. Klemp, 10 O.R. 143 in which the cases relating to disqualification by reason of favour or interest are fully discussed; and also R. v. Dublin, L.R. 2 Ir. 527.

An ordinary member of a society which is prosecuting, but who has no control over or responsibility for any such prosecution, is not disqualified: Allison v. General Council (1894), 1 Q.B. 750; R. v. Burton (1897), 2 Q.B. 468; nor is the fact that a county police magistrate is paid by fixed salary which is payable out of a fund created by fines: Ex p. McCoy, 1 Can. Cr. Cas. 450; nor that he is a member of a local branch of a humane society (the latter being prosecutor), but which branch has nothing to do with the prosecution: R. v. Mayor of Deal, 45 L.T. 439; for other instances see R. v. Pettelman, 9 L.T. 683. The facts shewn in any of these cases would not be a disqualification at common law, even in the absence of special provision in the statute: R. v. Fleming, 27 O.R. 122.

A justice who, as a druggist, fills medical prescriptions containing alcohol, has not such an interest as disqualifies him from sitting on a charge against a person for selling liquor without a license: R. v. Richardson, 20 O.R. 514.

Bias or Likelihood of Bias.—By certain statutes the disqualification is expressly removed in many cases where the justice, as one of a class, may be remotely interested. Thus a justice who is a member of a municipal council is declared not disqualified to sit in prosecutions under by-laws of the

municipality, although the fine would go to the municipality of which he is a ratepayer: R.S.O. c. 223, s. 477.

There are many similar provisions in various statutes, but, even in such cases, the removal of disqualification is strictly limited to that expressly provided for by the statute, and does not extend to relieve the justice from disqualification, if the circumstances are such that he is likely, as a matter of fact, to be biased in the case: R. v. L e, 9 Q.B.D. 394; R. v. Gaisford (1892), 1 Q.B. 381; R. v. Henley (1892), 1 Q.B. 504.

So a justice who is a member of a municipal council which has directed the prosecution, is disqualified: Tessier v. Desnoyes, Q.R. 12 S.C. 35; R. v. Handsley, 8 Q.B.D. 383; and a justice who, as a member of a local board of health which passed a resolution directing the prosecution, and who was present when the resolution was passed, was held to be disqualified: R. v. Lee, 9 Q.B.D. 394: for other instances see R. v. Meyer, 1 Q.B.D. 173; R. v. Huntington, 4 Q.B.D. 522; R. v. Dublin, L.R. 2 Ir. 522; R. v. Douglas (1898), 1 Q.B. 560.

This is on the ground of bias or prejudice, which (quite independently of interest, or relationship to any of the parties) is a ground of disqualification; and a justice who is biased in regard to any matter before him as a justice, is not only disqualified, but the proceedings are void, and he is liable to an action for damages if he acts in the case: see Leeson v. Gen. Council, 43 Ch. D. 366, in which the authorities are summarized; also R. v. Milledge, 4 Q.B.D. 332.

But a practicing solicitor, who was also a magistrate, was held not disqualified, either on the ground of probability of bias or of interest as a member of the Law Society (the prosecutors), nor as being, as such member one of the prosecutors in the trial of a person on a charge of falsely pretending to be a solicitor: R. v. Benton (1897), 2 Q.B. 468.

In order to invalidate a conviction actual bias need not be proved, if the facts shew ground for reasonable apprehension or likelihood of bias; even if there was no real bias, and even if there was no conflicting testimony in the case; R v. Steele, 26 O.R. 540; and even if the justice decided the case against his own interest or feelings: R. v. Gudridge, 5 B. & C. 459.

The question is not whether there is, in fact, any pecuniary or other interest, or bias, but whether there is a reasonable apprehension of bias, as for instance, if the justice is not disqualified by reason of being a member of a municipal council,

(the prosecutor), yet if he voted for the resolution authorizing the prosecution he would be so: R. v. Huggins (1895), 1 Q.B. 563; R. v. Henley (1892), 1 Q.B. 504.

The question is fully discussed and the authorities noted in R. v. Steele, supra, in which Meredith, C.J., deduces from the authorities this principle: "That if a state of things exists, whether arising from relationship, interest or any cause whatever, which would be likely to create a bias, or which causes a reasonable apprehension of bias, even though it be an unconscious one, and even if there existed no actual bias in the magistrate in favour of either of the parties, he is disqualified from acting if the party was not aware of that state of things, and so did not object: R. v. Cambridge, 8 E. & B. 637; Wakefield v. West, L.R. 1 Q.B. 84; or, if knowing it, he objected at the time. But if the party was aware of it, and did not object until after the case had been decided, or an opinion had been expressed in it by the justice, the objection is waived and cannot afterwards be raised: R. v. Warwick (Sheriff), 24 L.T. 211; R. v. Cambridge, 27 L.J. M.C. 160; R. v. Aberdare, 14 Q.B. 854; R. v. Kent, 44 J.P. But a mere possibility of bias, not amounting to a likelihood of it, is not sufficient to disqualify: R. v. Farrant, 20 Q.B.D. 58; R. v. Rand, L.R. 1 Q.B. 230. Upon the principle of the likelihood of bias, a physician who had attended a person prior to his decease, was prohibited holding, as a coroner, an inquest as to the cause of death, on the ground that he would be a material witness and also a judge in the case: Re Harvey v. Mead, 34 C.L.J. 330.

It is not necessary to specify the particular grounds on which the probability of bias is contended for: it is sufficient that objection is taken: R. v. Yarmouth (Jus.), 8 Q.B.D. 525.

If one disqualified justice sits with other justices, the bench is disqualified; although the disqualified justice does not in any way interfere in the case: the court being improperly constituted by his presence, its proceedings are invalid, even if the disqualified justice occupies a seat on the same platform; he must entirely withdraw: R. v. Yarmouth (Jus.), 8 Q.B.D. 525; R. v. Surrey (Jus.), 1 Jur. N.S. 1138: R. v. Cheltenham (Jus.), 1 Q.B. 467; R. v. Hereford (Com.), 2 D. & L. 500; R. v. Suffolk, 18 Q.B. 416; R. v. O'Grady, 7 Cox, C.C. 247. The subject is fully discussed in R. v. Klemp, 10 O.R. 143. See also R. v. Budden, 60 J.P. 166, deciding that an interested justice sitting near the bench, but taking

no part, does not disqualify; and the similar case of Re Southerick, 12 C.L.T. 173; 21 O.R. 670.

The court will not go into the question whether the justice who was disqualified took any part, such as discussing the case with the others. The question is whether he was so interested in the matter that he ought not to have sat: R. v. Meyer, 1 Q.B.D. 173, followed by R. v. London, 8 T.L.R. 175; R. v. Rand, L.R. 1 Q.B. 230.

It is no answer to the objection that there was a majority in favor of the decision, exclusive of the interested justice, nor that he withdrew before the decision, if it appears that he joined in discussing the case: R. v. Hertfordshire (Jus.), 6 Q.B. 753.

If one of the convicting justices sits at the Sessions on an appeal from his conviction, the proceedings will be void: Ex p. Clarke, L.R. 26 Ir. 1. But his mere presence, during a part of the proceedings during the same Sessions, will not do so: R. v. London (Jus.), 18 Q.B. 421.

In R. v. Stone, 23 O.R. 46, the information was taken and summons issued by an interested justice, but the hearing took place before another justice who was not interested, and the conviction was sustained.

But in R. v. Gibbon, 6 Q.B.D. 168: the court held under similar circumstances, that the conviction was invalid. The latter case was disapproved of, but not upon this point, in R. v. Handsley, 8 Q.B.D. 383.

Justice May be a Witness .- The fact that a justice is subprenaed as a witness by one of the parties does not disqualify him: R. v. Middlesex, 2 V.R. 459; R. v. Tooker, 32 W.R. 753; R. v. Farrant, 20 Q.B.D. 58; and a sitting justice may be called as a witness and examined upon the question whether he has any interest in the subject matter, or upon any other question of fact in the case: R. v. Sproule, 14 O.R. 375; but see contra, R. v. Brown, 16 O.R. 41; and he may afterward resume his place on the bench: 3 Bacon's Abridgement, 7th ed. 206; R. v. Tooke, supra; R. v. Farrant, supra.

If the justice refuses to be sworn or to give evidence, the conviction will be quashed on the ground that the accused was not allowed his "full answer and defence" as required by Code 850. The parties have the right to the benefit of the justice's evidence of facts within his knowledge, bearing on the case.

But the conviction will not be quashed on the refusal of the justice to be sworn as a witness, unless it is shown that the request that he should testify was made bona fide, and that the justice could have given material evidence, and that the defendant was prejudiced h; such refusal: Ex p. Flannagan, 2 Can. Cr. Cas. 513.

In R. v. Petrie, 20 O.R. 317, Armour, C.J., discussing the question of the propriety of a justice resuming his seat on the bench after giving evidence, compared the position of a justice to that of a juror, and said: "If the evidence given by a juror, called as a witness, is contradicted, is he to join in determining whether his evidence or that in contradiction is to prevail! If his credibility is attacked, is he to join in determining the question of his own credibility?"

When the functions of a juror are united with those of a judge, as in the case of a justice trying a case, he cannot be both a witness in the case, and also sit in judgment upon it.

In R. v. Sproule, 14 O.R. 375, Cameron, C.J., said that the defendant cannot be deprived of the benefit of the justice's evidence; but that it would seem he ought not to take his seat on the bench afterwards; and if he is the sole justice, he should adjourn the case for some other justice to hear it, if his evidence is of such a nature that it would be unseemly for him to try the case.

The justice is bound to testify if called in good faith to really give evidence of material facts which cannot be otherwise proved; and it would seem that he is not prohibited from going on the bench again; but if the case can be proceeded with without the aid of the justice, it would be better that he should not further act, and if his evidence was upon some contested point he ought, by no means, to sit in judgment upon it.

If, however, the evidence given by the justice is upon some uncontested fact or technical or formal matter, it would seem that there could be no objection to his resuming his seat on the bench.

The objection that the justice is interested may be waived. See remarks in chapter on "Waiver": Wakefield v. West, L.R. 1 Q.B. 84; R. v. Clarke, 20 O.R. 642; R. v. Stone, 23 O.R. 46.

Sundays and Holidays. -Sunday is dies non juridicus at common law; and as a matter of public policy, no judicial

act may lawfully be performed on that day. And the same are prohibited by 29 Car. II., c. 7, s. 6: R. v. Ramsay, 16 W.R. 191; Re Cooper, 5 P.R. 256; R. v. Murray, 28 O.R. 549: Foster v. Toronto Ry. Co., 31 O.R. 1; R. v. Cavalier 11 Man. R. 333: 1 Can. Cr. Cas. 134. Service of and notice of appeal on Sunday is void: R. v. J. J. Middlesex, 11 Jur. 434.

By Code 729, a verdict of a jury and "other proceedings" taken in court on Sunday ("or other holiday" added by the statute of 1900, c. 46), are valid. The "other proceedings" taken on Sunday must be sui generis; and general proceedings are not authorized: R. v. Cavalier, supra. And it was held in the same case that Code 729 only applies to trials before a jury, and not to preliminary inquiries before a magistrate.

Judicial notice will be taken that a certain day was Sunday: S.C.

Judicial proceedings taken on Sunday are void, notwithstanding express consent, or waiver: Taylor v. Philips, 3

Taking an information is a ministerial and not a judicial act, the justice having no power to refuse to take it (see ante pp.61.62), and it is therefore not within the above prohibition: Code 558, 843; Thompson v. Desnoyes, 3 Can. Cr. Cas. 68. And a warrant to apprehend, although a judicial proceeding: R. v. Ettinger (S.C.N.S.), 3 Can. Cr. Cas. 387 (and see Code 559) may be issued and executed on Sunday under the express authority of Code 564 (3). "Backing" a warrant is a ministerial act: Clark v. Woods, 2 Exch. 395, and may therefore be done on Sunday. But see Ex p. Fleigher, 17 C.L.T. 95, in which arrest on Sunday on a warrant of commitment under a conviction under the Canada Temperance Act was held had Holidays other than Sundays have been held to be juridical days, and that judicial proceedings taken by a magistrate on them, are valid: Foster v. Toronto Ry. Co., 31 OR. 1, by Boyd, C.J., differing from R. v. Murray, 28 O.R. 549; 1 Can. Cr. Cas 452, by McMahon, J. See Harrison v. Smith, 9 B. & C. 243.

Limitation of Time for Prosecution. - The jurisdiction of a justice is ousted if there is a time limited by law for commencing the prosecution, and that time has expired.

The time is to be computed from the day on which the illegal act was committed; unless the offence was a continuing one, in which case the time is computed from the last day on which it was committed: London v. Worley (1894), 2 Q.B. 826; Allen v. Worley, L.R. 5 Q.B. 163; Knight v. Halliwell, L.R. 9 Q.B. 41?

The time within which proceedings must be taken is sometimes limited by the particular statute relating to the offence. If not, the two following general provisions apply:

In the case of an offence, punishable on summary conviction by justices or magistrates under part 58 of the Criminal Code, the information must be laid within six months from the time the offence was committed, (i.e., completed, Jacomb v. Dodgson, 27 J.P. 68); unless it is otherwise specially provided: Code 841.

And for certain indictable offences the limitation is provided by Code 551.

In computing the time, the day following that on which the offence was committed, will be the first day counted, and the day on which the information was laid will also be cound as part of the time: Radcliffe v. Bartholomew (1892), 1 Q : 121.

If the me expires on "any holiday" the information may be laid on the next day following, which is not a holiday: R.S.C. c. 1, s. 7 (27); R.S.O. c. 1, s. 8 (17).

The term "holiday" includes (in matters under Dominion laws) Sunday, New Year's day, the Epiphany, the Enunciation, Good Friday, the Ascension, Corpus Christi, St. Peter and St. Paul's day, All Saints' day, Conception day, Easter Monday, Ash Wednesday, Christmas day, the Sovereign's birthday, or the day fixed for its celebration by proclamation of the Governor-General-in-Council, Dominion day, and any day appointed by similar proclamation as a fast or thanks-giving: E.S.C. c. 1, a. 7 (26); also Labour day.

Under Ontario laws the holidays are less in number, and are provided by R.S.O. c. 1, s. 8 (16).

The law does not, however, prohibit an information being laid or a warrant being issued on any of these holidays, nor on Sunday; and as already stated, all proceedings on holidays other than Sundays have been held to be valid: ante p. 146.

The term "month" means a calendar month: R.S.C. c. 1, s. 7 (25); R.S.O. c. 1, s. 8 (15).

Code 841 does not apply to prosecutions before magiatrates under their special summary jurisdiction, conferred by part 55 of the Criminal Code: Code 808.

That section (841) only applies to charges brought before justices or magistrates under the summary jurisdiction clauses, part 58; and it does not apply even to a conviction for an offence which might have been summarily tried before a justice, but of which the defendant was convicted before a magistrate under part 5; or before a jury on an indictment for a higher offence.

For instance, a conviction for common assault on a trial of an indictment for rape is valid, even if the prosecution was brought after the time within which the defendant could have been prosecuted summarily before a justice, for common assault: Code 841 has no application to a trial for an indictable offence upon which a jury brings in a verdict for a lesser one, even if the latter might have been the subject of a summary conviction before a justice: R. v. Edwards, 29 O.R. 451.

And so, when the accused was committed for trial for an indictable offence (rape), and the prosecution for it was begun within the time for beginning a summary prosecution for a lesser offence upon the same facts, (having carnal knowledge of a girl under the age of 16 years), for which he could be convicted under an indictment for rape; the accused was afterwards indicted for the lesser offence, and not for the one for which he was committed for trial; and it was held to be in time, although the indictment was found after the expiry of the time limited for the prosecution for the lesser offence: R. v. West (1898), 1 Q.B. 174.

The principle on which the above case was decided is that a prosecution for the larger offence includes the lesser, and the commencement of prosecution for the former relates also to the latter.

In all cases of summary convictions, laying the information within the time limited is all that is required by Code 841, unless it is otherwise specially provided; but the prosecution must be followed up without delay, unless it was unavoidable; as in case the defendant cannot be found: Paley on Convictions, 6th ed., 91; R. v. Casbolt, 11 Cox, C.C. 385; R. v. Willace, 1 East, P.C. 186.

Prosecutions for the indictable offences, mentioned in Code 551, must be commenced within the various periods

provided by that Code for prosecutions for the offences there mentioned.

The "commencement of the prosecution," under Code 551, is the laying of the information; and the defendant may afterwards be convicted although the period of time has expired at the time of conviction: R. v. Barret, 1 Salk. 383; R. v. Kerr, 26 C.P. 214; and cases cited there at p. 218; also R. v. McKenzie, 23 N.S.R. 6; R. v. Carbray, 14 Que. L.R. 223.

But the particular statute relating to the offence may expressly require the defendant to be apprehended or convicted within the limited time: see R. v. Mainwaring, El. Bl. & El. 474; R. v. Bellamy, 2 D. & R. 727.

In addition to ss. 841 and 551 of the Code, the statute relating to the particular offence sometimes limits a time for commencement of prosecution; and where an offence may be punished under either of two statutes or sections of a statute, (or either at common law or by statute), then the prosecution may be brought under either of them: Code 933; see Hamilton v. Massie, 18 O.R. 585; and the question of limitation depends upon which law the prosecution is based on.

The above provisions of the Criminal Code as to limitation of time do not apply to prosecutions under Ontario laws in regard to which each particular statute usually limits the time for prosecutions under it. If that is not done, there is no time limited. There is no limitation at common law, and in the absence of any statutory provision there is no limitation of time for commencing criminal proceedings: 7 Encyclopedia of the Laws of England 471.

Other than as above indicated, there is no provision limiting the time for bringing prosecutions either under Dominion or Ontario statutes; after the time limited, if any, has elapsed, no prosecution can be brought.

Actions against justices for anything done by them, as such, under any Dominion law, must be begun in the county where the act complained of was done, and must be commenced within six (calendar) months: Code 975.

Similar provisions in relation to acts done under Ontario laws are contained in R.S.O. c. 88, ss. 13 and 15, amongst other provisions for the protection of justices and magistrates.

Res adjudicata.— It is a principle of the common law, as well as being expressly provided by Code 933, that a person

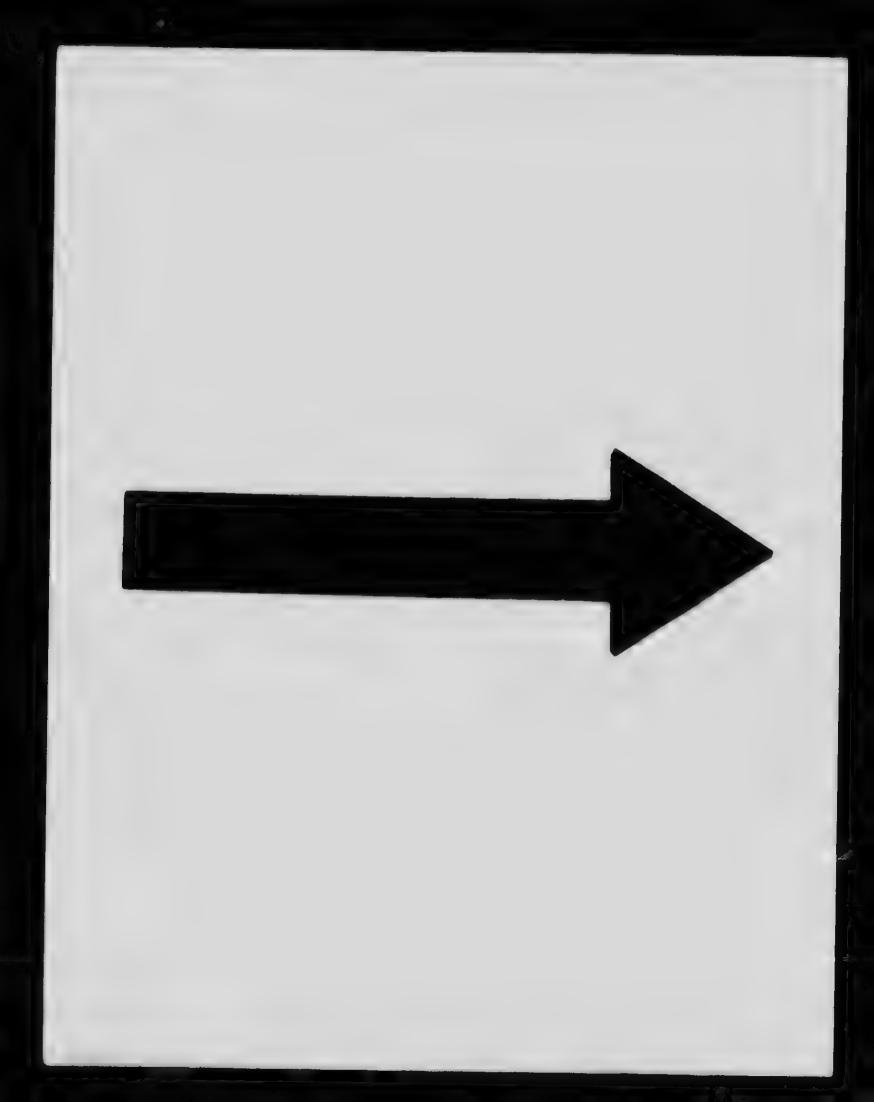
shall not be tried twice for the same offence, and a previous conviction or acquittal is available as a defence to a person who is put in peril a second time for the same act or offence, whether on a summary trial before a justice, or before a jury. And a justice has no authority to entertain an information for an offence, if the accused has been already tried by a tribunal having competent jurisdiction, and either acquitted or convicted for the same offence, or upon any other charge, indictable or otherwise, upon the same facts: R. v. Dann, I Moo. C.C. 424; R. v. Walker, 2 M. & R. 446; R. v. Stanton, 5 Cox, C.C. 324; Wemyes v. Hopkins, L.R. 10 Q.B. 378; Lockyer v. Ferryman, 2 App. C. 519.

Under this general principle, if the matter is within the jurisdiction of the justices, there would stand a decision on the very point by a court of competent jurisdiction; and no reasonable man would think of deciding what the former magi trate had decided; especially after a decision in favour of the accused: Per Coleridge, C.J., in R. v. London (Jus.), 25 Q.B.D. 357, in which it was decided that there is, at common law, and apart from statutory provisions, no appeal from an acquittal by a competent tribunal.

The defence that the defendant was previously tried and either convicted or acquitted by a competent tribunal is good, even if the former conviction was in a foreign country: R. v. Hutchinson, cited in 1 Leach, C.C. 134 (note (a): R. v. Roche, 1 Leach, C.C. 125; and even if no punishment was awarded on the former conviction: R. v. Miles, 24 Q.B.D. 423.

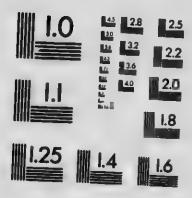
But the former decision must have been upon the merits; and a dismissal on a technicality, or for non-attendance of the prosecutor; or on other grounds of non-suit; or if the certificate is otherwise illegally granted; or if there was a withdrawal of the case before decision, it is not a bar to a second prosecution: R. v. Strington, 1 B. & S. 688; R. v. Green, Dears. & B. C.C. 113; R. v. Machen, 14 Q.B. 74; Reed v. Nutt, 24 Q.B.D. 669.

Even if the form of the second charge is altogether different from the first, if it is based upon precisely the same facts it will be barred: R. v. Drury, 18 L.J. M.C. 189; and even if the second charge is in a more aggra ated form: R. v. Elrington, 1 B. & S. 688. But a second charge based upon the same facts with additional material facts, which have subsequently arisen, and which constitute it an offence of a differ-



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1653 East Main Street Rochester, New York 14609 USA (716) 482 ~ 0300 ~ Phone (716) 288 ~ 5989 ~ Fax ent character from the one previously decided, is not barred. For instance, a conviction on a charge of assault is no bar to a subsequent charge of manslaughter, the person assaulted having died after the conviction for assault, and the death making the case a substantially different one: R. v. Friel, 17 Cox, C.C. 325; R. v. Morris, L.R. 1 C.C.R. 90.

A former decision does not prevent the court from inquiring into matters which have since arisen: Heath v. Weaverham Overseers (1894), 2 Q.B. 114; but in a case in 1895 of R. v. Hilton, 59 J. P. 778, Grantham, J., held that a conviction for assault barred a prosecution for manslaughter, the person assaulted having died after the prosecution for assault: see R. v. Walker, 2 M. & R. 446.

But by the same unlawful acts a person may be guilty of two separate offences, for both of which he may be convicted: R. v. Smith, 19 O.R. 714; R. v. Handley, 5 C. & P. 565.

But where the defendant may be convicted on the same facts under two statutes or laws, for substantially the same offence, a conviction under one law is a bar to a charge under the other: the offender may be tried under either statute, but cannot be tried twice: Code 933. Wemyss v. Hopkins, L.R. 10 Q.B. 378.

In order to be a bar the issue in the second proceeding must be identical with that in the first one, although the facts may vary, and although the charges formulated may not be the same: R. v. King (1897), 1 Q.B. 214; see notes of cases in 2 Can. Cr. Cas. 497.

An acquittal on a charge of committing an offence is a bar to a charge of attempting to commit it: R. v. Ryland, 2 Russell, 55, for he might have been convicted of the attempt on the trial on the charge of committing it: Code 711, 712.

The adjudication on a previous trial by a justice in collusion with the defendant will not be a bar, and will be quashed: R. v. Gilliard, 12 Q.B. 527; and upon the trial of a subsequent proceeding the court will inquire into the circumstances under which a certificate of acquittal of conviction was made, and will recognize its futility, although the conviction has not been quashed: Reed v. Nutt, 24 Q.B.D. 669 (by Esher, M.R., Coleridge, C.J., doubting); Miller v. Lea, 25 A.R., p. 434.

A previous conviction which is void, as being beyond the jurisdiction of the convicting justice, is no defence to a second charge, even if the former has not been quashed: R. v. Lee, 2 Can. Cr. Cas. 233; Keating v. Graham, 26 O.R. 361; Forbes v. Michigan Cen. R., 22 O.R. 584.

The following are the special provisions of the Criminal Code upon the subject.

It is a good defence, to an indictment for an offence, that the defendant has previously been lawfully acquitted or convicted on the same charge: Code 631 (4); or on any other charge on which he might have been convicted upon his former trial upon the same facts: Code 631 (5) and (6); see also Code 633. But it is no defence if he could not have been so convicted: R. v. Vandercomb, 2 Leach, 708; as an acquittal on a trial for murder is not a bar to a subsequent charge of assault on the same facts: R. v. Smith, 34 U.C.R.

When the charge is substantially the same, but adds matter of aggravation, the previous acquittal is, notwithstanding, a good defence: Code 633; unless the facts constituting the aggravation occurred subsequently to the conviction or acquittal, making it a new offence. In a case of theft of several articles at the same time, a conviction or acquittal on the charge for the theft of one of the articles is no defence to a subsequent charge upon the other articles: 2 Russell, 6th ed., p. 60.

The same defences will be available upon the preliminary inquiry before the justice; for if the conviction or acquittal upon the previous trial is established, there is no proper case to be sent for trial a second time.

On a summary trial before a magistrate for an indictable offence under s. 783, etc., of the Criminal Code, the magistrate, if he dismissed the case, is required to give the accused a certificate: Code 797; Form C.C.C. in schedule 1 to Criminal Code; and the person obtaining such certificate of dismissal, or who is convicted of the charge, is released from all further or other *criminal* proceedings for the same cause: Code 799.

A certified copy of the certificate, or a copy proved to be a true copy of the original, is sufficient proof of the dismissal or conviction: Code 802; and the certificate is sufficient evidence without proof of signature or other evidence: Can. Ev. Act, 1893, s. 10.

A justice who tries a case and dismisses it is required to give the accused a certificate: Form C.C.C. at the end of the Criminal Code: and such certificate, without proof, is a bar to any subsequent information for the same matter against the same defendant: Code 862.

In the case of juvenile offenders, similar provision is made by Code 819 and 821: Form of certificate T.T. in the Criminal Code. On a charge of assault or battery, preferred under Code 864 by or on behalf of the person aggrieved, if the justice dismisses the charge as not proved, or if he finds the assault to have been so trifling as not to merit any punishment, and so dismisses it, he is forthwith, on request, to make out and deliver to the person charged a certificate of dismissal (Form C.C.C. to the Criminal Code), and upon obtaining such certificate, or if he has been convicted, and undergoes the punishment awarded, he is relieved from all further civil or criminal proceedings for the same cause: Code 866.

A certificate of dismissal of a charge of assault tried before a magistrate, is a bar to a subsequent charge for an aggravated assault on the same facts: Wemyss v. Hopkins, L.R. 10 Q.B. 378

Code 865 and 866 apply only when the prosecution has been brought by or on behalf of the party aggrieved.

If not so brought the certificate will be no bar to civil proceedings, but criminal proceedings will be barred under the general law.

The defendant must take the objection that there was a previous trial and dismissal or conviction, before the justice decides the case on the second trial, or it will be waived: R. v. Bibby, 6 Man. R. 472; R. v. Herrington, 13 W.R. 420. See post "Waiver."

Title to Land or Claim of Right.—It is a principle of law, independent of any statutory enactment, that upon the summary trial of a criminal charge, the justice's jurisdiction is ousted if any question as to title to land is raised bona fide by the accused; or if there is an honestly believed in claim of right to do the act complained of. This is upon the ground that the accused is entitled to have such claim of title or right tried by a judge and jury in the civil courts; whereas the justice, by convicting, would be settling a question of property conclu-

sively and without remedy, if his decision happened to be wrong: R. v. Stimpson, 4 B. & S. 301; R. v. Taylor, 8 U.C.R. 257; R. v. Davidson, 45 U.C.R. 91.

Generally, in criminal cases, the mere making of a claim of right or title, ousts the justice's summary jurisdiction; whether such right or title really exists or not; if it is honestly raised and really believed in. See the observations of Findley, J., Watkins v. Major, L.R. 10 C.P. 662. Even if the title set up be only colourable, yet if the assertion be made sincerely, the jurisdiction fails. But there must be some colour or shew of reason for it: Cornwell v. Sanders, 3 B. & S. 206; Scott v. Baring, 18 Cox, C.C. 128.

The only question for the justice, is whether the act was done with a bona fide idea of lawful authority entertained at the time by the accused. If so, the justice must dismiss the case, without at all investigating the legal grounds of the claim.

But if he finds it a mere pretence, for the purpose of avoiding penalties, his jurisdiction is not ousted. The justice cannot decide as to the title itself, but only on the honesty of the defendant in alleging it: Pa' on Convictions, 6th ed. 215; R. v. Critchlow, 26 W.R. ...; Leet v. Pardoe, 30 L.J.M.C. 108; R. v. Davidson, 45 U.C.R. 91.

But the defendants will not be protected in excessive conduct not necessary for the exercise or protection of their supposed rights: R. v. Clemens (1898), 1 Q.B. 556.

And if the facts lead to only one conclusion, and that against the defendant, and there is no contradictory evidence, then there is no bona fide question of title, and the jurisdiction will not be ousted: Re Moberly v. Collingwood, 25 O.R. 625.

And when the defendant was estopped (e.g. having attorned as tenant to the party whose title he now disputes) from denying the other party's title or claiming title in himself, there is no bona fide claim of title, and jurisdiction is not ousted. Bank v. Gilchrist, 6 A.R. 659; Wickham v. Lee, It would have been otherwise if the lessor's title had pared during the tenancy: Montnoy v. Collier, 1 E. & B. 650; see Bicknell & Seager's D. C. Act, p. 76.

The claim set up must be one that would, if it were sustained by the facts, be good in law, and not one which could not exist in law: Watkins v. Major, L.R. 10 C.P. 662; Har-

greaves v. Diddams, L.R. 10 Q.B. 582; Reece v. Miller, 8 Q.B.D. 626; Pearse v. Scotcher, 9 Q.B.D. 162; Leat v. Vine, 30 L.J. M.C. 207.

If there is a real question of title, the want of good faith of the defendant or the weakness of the evidence is of no consequence; and there is no jurisdiction: Marsh v. Lewis, 17 Jor. 558.

A question of the title to land ousts the jurisdiction, if it is really, although only incidentally, in question: Trainor v. Holcombe, 7 U.C.R. 548; but it is doubtful whether the question being raised merely incidentally, and if the justice finds the fact against the party raising it, jurisdiction is ousted: Portman v. Patterson, 21 U.C.R. 237; Re Bushell v. Moss, 11 P.R. 251; McNeill v. Haines, 13 P.R. 115; Muskoka v. McDermott, 21 A.R. 129.

See the following cases upon the point as to when the question of title to land is held to be raised: R. v. Taylor, 8 U.C.R. 257; Fair v. McCrow, 31 U.C.R. 599; R. v. Harden, 2 E. & B. 187; Pearson v. Glazebrook, L.R. 3 Ex. 27; Bassano v. Bradley (1896), 1 Q.B. 645; Howorth v. Sutcliffe (1895), 2 Q.B. 358.

The question for the justice to decide is whether the defendant's liability is contingent upon a decision as to a title to land upon which there is a real dispute: South Norfolk v. Warren, 12 C.L.T. 512.

As to the meaning of "land," see Irish Land Com. v. Grant, L.R. 10 App. Cas., p. 25.

The question as to the terms of a tenancy is not a question as to title to land: Re English v. Mulholland, 9 P.R. 145; Re Knight, 1 Exch. 802.

But where the question is as to the expiry of the landlord's title, and the defendant has become liable to another person for mesne profits, it is a question of title to land: Montnoy v. Collier, J E. & B. 629; and the question whether a township is forced to repair a highway on the ground that it is a public road vested in Her Majesty as a provincial work, is not a question as to title to land: Re Knight v. Medora, 14 A.R. 112; nor whether a stream is navigable: Reece v. Miller, 8 Q.B.D. 626.

The question whether rails forming a fence, put by mistake on another person's land, were the property of the person who put them there, is not a question as to title to land: Bradshaw v. Duffy, 4 P.R. 50; Re Knight v. Medora, supra.

The question whether the right to impound cattle is implied in the right to pasturage, is not a question as to the title to land: Graham v. Spettigue, 12 A.R. 261.

If the question be as to leasehold land it ousts the jurisdiction: Tompkins v. Jones, 22 Q.B.D. 599; and so the claim of right to obstruct a street: R. v. Taylor, 8 U.C.. 257: or as to a right of way across a railway: Cole v. Miles, 57 L.J.M.C. 132; 36 W.R. 784.

It was said by Coleridge, C. J., in R. v. Eardley, 49 J.P. 551, that a claim to have the right to the exclusive use of a highway is not a question of the title to land, but only as to the use of the surface of the road, and does not oust the justice's jurisdiction. But see the remarks of Willis, J., in the same case.

In some instances the legislature has qualified the restriction under the above common law rule, by enacting, in effect, that in order to oust the justice's jurisdiction in the particular case there must not only be a bona fide claim of right, but also that the defendant must give evidence to satisfy the justice that he had fair and reasonable grounds to suppose that he had a right to do the act complained of: White v. Feast, L.R. 7 Q.B. p. 357.

Thus, under Code 275 (3a), no one is guilty of bigamy by going through a form of marriage if he or she, in good faith, and on reasonable grounds, believed her husband or his wife to be dead. And in cases of wilful damage, under Code 511, the jurisdiction is ousted by s.-s. 2 (a), if it is shewn that the accused acted under a fair and reasonable supposition of right. And the Petty Trespass Act, R.S.O. c. 120, s. 1, contains a similar proviso. In a prosecution under any of these statutes, mere honest belief or claim of right to do what he did, is not sufficient to protect the accused; he must also shew that there really were fair and reasonable grounds for such belief.

The justice cannot, in such case, try the question of right; he is to enquire if there are reasonable grounds for claiming the right: and if there are not, his jurisdiction is not ousted: R. v. Pearson, L.R. 5 Q.B. 237; White v. Feast, L.R. 7 Q.B. 353: R. v. Davidson, 45 U.C.R. 91.

It is for the defendant in such case, to give evidence of facts upon which he could reasonably found a belief that he had the right to do the act in question: R. v. Malcolm, 2 O.R. 511; R. v. Davy, 27 A.R. 508, 4 Can. Cr. Cas. 28; R. v. Mussett. 26 L.T. 429.

In assault cases, Code 842 (8) provides that the justice is not to try the case if any bona fide question as to the title to land, or bankruptcy, or the execution of any process of any court arises.

In this section of the Code there is no provision requiring proof of reasonable grounds for the defendant's belief in his claim of title; the requirement is, merely that there must be a real question as to title, and that it is honestly raised; if so, the jurisdiction is ousted; no assault case, however clearly established, can be summarily tried by a justice if a question of the title to land is raised in it: R. v. Pearson, L.R. 5 Q.B. 237.

But if the assault was independent of the question of title, the fact that there was such a question, is no defence, even if the assault arose out of a dispute between the parties as to the title to land: R. v. Edwards, 4 W.R. 257.

And in R. v. Clemens (1898), 1 Q.B. 556, (a wilful damage case), Lord Russell, C.J., held, that though the defendants were acting upon supposed rights, yet if they exceeded what was necessary for the assertion or protection of these rights, and thus committed damage, they were responsible criminally for such excess. But in R. v. Pearson, L.R. 5 Q.B. 237, it was held, that in assault cases a question of right is a good defence, even if excessive force was used, because the words of the proviso in the statute are large enough to exclude any cases of assault whatever, in which a question of title arises.

The question of title, to be a defence in assault cases, must be a question as to land; and not as to persons property: Code 842 (8); White v. Fox, 49 L.J. M.C. 60.

Code 284 (2), makes it a good defence to a charge, under that section, that the accused claimed in good faith a right to possession of the child taken away. In that case the mere bona fide claim of right is a sufficient defence, if there is any colour of right whatever.

The questions of fact as to whether or not the defendant acted upon a bona fide belief that he had the right to do the

act complained of; and as to whether he had reasonable grounds for his belief; and as to whether he sets up a question of title bona fide; are for the justice to decide, but may be reviewed by the court on motion to quash a conviction if the evidence is clearly the other way: White v. Feast, supra; R. v. Davey, supra.

When the evidence shewed clearly, that the defendant had acted upon a reasonable supposition of right, and there was no contradicting evidence, the conviction was quashed: R. v. Macdonald, 12 O.R. 383; but it was held by Armour, C.J., R. v. Malcolm, 2 O.R. 511, following the principle in Colonial Bank v. Willan, L.R. 5 P.C. 417, that the court would not grant certiorari, nor quash a conviction upon the ground of erroneous finding of fact by the justice, upon a due consideration of the evidence brought before him. R. v. Malcolm was a case in which there had been an appeal to the sessions and a verdict by the jury against the defendant, and this was the chief reason for the decision by Armour, C.J. But an application to quash a conviction, cannot now be made after it has been affirmed on appeal, and it was expressly decided in Rv. Davey, supra, that the court, on motion to quash, will review the justice's decision.

Mens Rea.—The principle upon which the defendant is allowed to set up an honest claim of right as a defence is similar to that which makes it generally necessary, to a conviction in criminal prosecutions, to shew that the defendant acted with guilty knowledge or intent.

The general rule of law is that a person cannot be convicted in a proceeding of a criminal nature unless it is shewn that there was a blameworthy condition of mind: a mens rea, such as neglect, malice, or guilty knowledge: Chisolm v. Doulton, 22 Q.B.D. 736: R. v. Atwood, 20 O.R. p. 576: R. v. Farnborough (1895), 2 Q.B. 484; Dickenson v. Fletcher, L.R. 9 C.P. 1; Aberdare v. Hammett, L.R. 10 Q.B. 162.

There must be a mischievous intent in order to constitute an act a criminal one; but such intent need not be that of doing the very act prohibited, if it is intended to do something wrong: R. v. Martin, 8 Q.B.D. 54; Beatty v. Gillbanks, 9 Q.B.D. 308; R. v. Pembliton, L.R. 2 C.C. 119.

But this principle is not now of such general application as formerly, and there are many cases of offences against statutes to which the above rule does not apply: such as

the statute interdicting unlicensed private lunatic asylums, which were held to include not only a place for lunatics, but also any place where persons are in any way restrained of their liberty on account of their mental condition. It is no defence available to a person charged with keeping such a place, that he honestly believed that the latter class of persons was not included in the statute: R. v. Bishop, 5 Q.B.D. 259. So, in a prosecution under the provisions of a liquor license law, prohibiting the supplying of intoxicants to a person who is intoxicated, the fact that the person who obtained the liquor was apparently sober, and that there was no intention to contravene the statute, would be no defence: Cundy v. Lecocq, 13 Q.B.D. 207. And it is no defence to a charge of assaulting a peace officer in the execution of his duty that the defendant did not know he was such officer: R. v. Forbes, 10 Cox, C.C. 362. So in offences against the Act prohibiting the adulteration of food, etc.: Fitzpatrick v. Kelly, L.R. 8 Q.B. 337.

In this class of cases the existence of a bona fide mistake is no answer to a charge; and only applies in mitigation of penalty: Cundy v. Lecocq, supra.

And if the act is in itself an improper one, it is no defence that the accused believed that he had the legal right to do it: R. v. Prince, L.R. 2 C.C. 154.

It is a question of the intention of the statute relating to the offence, whether in a particular case absence of wrong intent is a good defence or not. "The result of the reported cases is that it is necessary to look at the object of each statute that is under consideration, to see whether, and how far, knowledge is of the essence of the offence created:" per Stephen, C.J., Cundy v. Lecocq, supra.

The legislature may enact, and in some cases has enacted that, "a man may be punished for an offence although there was no blameworth condition of mind, but this is against the general principle of law; and it lies on those who assert it, to make it out convincingly by the language of the statute. And a blameworthy condition of mind of a servant cannot be imputed to the master": per Cave, J., Chisholm v. Doulton, 22 Q.B.D. at p. 74, approved in Somerset v. Wade (1894), 1 Q.B. p. 576; Massie v. Morris (1894), 2 Q.B. 412; Bank of N.S.W. v. Piper (1997), 66 L.J.P.C. p. 76; R. v. Vachon, 3 Can. Cr. Cas. 558.

But in some cases a master may be held responsible criminally for the acts of his servant in the course of his employment, even if such acts were done contrary to the master's orders. "The question is, whether upon the true construction of the statute in question, the master was intended to be made criminally responsible for the acts done by his servants in contravention of the Act, when such acts were done within the scope or in the course of their employment"; per Lord Russell of Killowen, Coppen v. Moore (1898), 2 Q.B. 300, at p. 313, in which case the subjects of mens rea and the responsibility of the master for the servant's acts, were discussed and authorities collected. For instances under particular statutes where it is unnecessary to shew mens rea: See R. v. Smith, 3 H. & N. 227; P v. Prince, L.R. 2 C.C.R. 154; Mullins v. Collins, L.R. 9 Q.B. 232, Somerset v. Hart, 12 Q.B.D. 360; Small v. Waugh, 47 J.P. 20; Benford v. Sims, 14 T.L.R. 424; Core v. James, 7 Q.B.D. 135; Newman v. Jones, 55 L.T. 327; Wilson v. Stewart, 3 B. &

In the leading case of R. v. Tolson, 23 Q.B., . 168, decided by the Court of Crown cases Reserved, the principle upon which the question whether, in a particular case, absence of wrong intent is, or is not an excuse, was fully considered. The rule as stated in that case is, that while it is undoubtedly a principle of law that, ordinarily speaking, a crime is not committed if the mind of the person doing the act be innocent, yet it is not an invariable rule, and a statute may be so framed, and use such prohibitory words, as to make the act punishable, whether there has been an intention to do wrong or not. Such as in the case of statutes or municipal by-laws passed for the special purpose of regulating matters for the general welfare of the community; or to protect particular rights; or to absolutely prohibit certain things from being done or omitted; the breach of them is ipno facto an offence; and a man must take care that such regulations are obeyed, and he fails to do so at his peril: see Fowler v. Papst, 7 T.R. But on the other hand, and irrespective of the wording of the statute, and however prohibitory such wording may be, the subject matter of the enactment, the nature of the offence, and of the consequences of penalties, the mischief to be cured, and all the circumstances indicating the intention of the legislature in passing the statute, are to be taken into consideration; and if these indicate that there was no intention to punish an act as a crime, when there was no tainted mind

it is a good defence that it was done innocently and with an honest belief on the part of the accused, based upon fair and reasonable grounds, that he had the right to do the act complained of.

In all cases in which there must be a mens rea, in order to constitute an offence, an honest claim of right, however absurd, will frustrate a summary conviction; but in cases where the absence of mens rea is not necessarily a good defence, the person who sets u a claim of right must shew some reasonable ground for its assertion: R. v. Hibbert, L.R. 1 C.C.R. 184; Watkins v. Major, L.R. 10 C.P. p. 666; Reece v. Miller, 8 Q.B.D. 626; R. v. Bone, 16 Cox, C.C. 437; Sherras v. DeRutzen (1895), 1 Q.B. 918.

Ignorance of law is no defence: Code 14, except in the case provided by Code 21. But ignorance of fact is generally a good defence: R. v. Tolson, support; but it is not so, if the act itself was an improper one, or in cases in which a wrong intent is not a necessary ingredient of the offence: R. v. Prince, support.

See also upon the question of criminal intent, R. v. Slavin, 21 C.L.T. 54; R. v. Preston, 5 Cox, C.C. 390; R. v. Glyde, L.R. 1 C.C.R. 139; R. v. Deaves, 11 Cox, C.C. 227; R. v. Thurburn, 1 Den. C.C. 387; R. v. Wood, 3 Cox, C.C. 453; R. v. York, 3 Cox, C.C. 181; R. v. Ollis (1900), 2 Q.B. 158.

CHAPTER X.

PERSONS UNDER A DISABILITY TO COMMIT CRIME.

Infants.—No child under seven years old can be convicted of any offence, whether by act or omission: Code 9: and such infancy is a justification or excuse for such offence: Code 8.

This is declaratory of the common law principle, that a child under seven is conclusively presumed not to have "mischievous discretion," or to be able to discern good and evil, and that he is, therefore, incapable of committing crime: R. v. Owen, 4 C. & P. 236; R. v. Smith, 1 Cox, C. 260; R. v. Boober, 4 Cox, C.C. 272; Marsh v. Loader, C.B.N.S. 535.

Although a child under seven cannot be convicted of any crime, yet if such child, or one of any age under 14 appears to be growing up under circumstances which expose him to lead an idle and dissolute life, he may be sent to an industrial school under R.S.O. c. 304, s. 11; see post "Juvenile Offenders."

A child of over 7 and under 14 years cannot be convicted of any offence unless it is shewn that he was competent to know the nature and consequences of his conduct, and to appreciate that it was wrong: Code 10.

The presumption is that a child under 14 does not know the nature of his conduct so as to make him criminally responsible; but this presumption, in case of a child over 7, may be rebutted by shewing that he did the act with guilty knowledge of wrong-doing, and the nature of the act committed, together with his conduct in connection with it, may themselves afford proof that he had guilty knowledge; 2 Russell, 115; 1 Hale, P.C. 25; R. v. Vamplew, 3 F. & F. 520; R. v. York, Foster, 70; R. v. Owen, 4 C. & P. 236.

Very clear evidence will be required to convict a child under 14: Roscoe's Cr. Ev., p. 998; 1 Hale P.C. 27.

The fact that a child of over 7 years, and having guilty knowledge or discretion, committed the crime by command or compulsion of his parents, or any other person, is no defence: see 1 Hale, P.C. 44, 516; 1 Hawk. P.C. c. 1, s. 14; unless such compulsion is by threats and actual fear of immediate death

or grievous bodily harm, from a person actually present when the offence was committed. This is, by Code 12, made a defence ir the case of a crime being committed by any person, and such defence is restricted to the degree of compulsion mentioned in Code 12, and does not extend to excuse murder or any of the other offences specially mentioned in that section: R. v. Tyler, 8 C. & P. 616.

A boy under 14 is conclusively presumed by the common law to be physically unable to commit any sexual offence whatever, as well as being presumed, as above mentioned, not to know the nature and quality of his acts: R. v. Eldershaw, 3 C. & P. 366; R. v. Hartlen (S.C.N.S.), 2 Can. Cr. Cas. 12.

In other than cases of sexual offences the presumption may be rebutted; but it is conclusive in those cases and cannot be rebutted even by proof that the boy had in fact arrived at puberty: R. v. Phillips, 8 C. & P. 736; see note to R. v. Hartlen, 2 Can. Cr. Cas. 12, as to cases of indecent assault.

Code 266 (2) expressly provides that a boy under 14 is incapable of committing the crime of rape.

This section of the Code is declaratory of the common law, and, by providing for the one class of cases, does not impliedly repeal by exclusion, or make obsolete, the common law principle in regard to other offences: R. v. Hartlen, supra.

A boy under 14 years, and over 7, cannot be convicted of an offence, under Code 269, of having carnal knowledge of a girl under the age of 14 years, although proved to have arrived at puberty: R. v. Waite (1892), 2 Q.B. 600; R. v. Jordon, 9 C. & P. 118; nor of rape; nor assault with intent to commit rape; or any other sexual offence: R. v. Brimilow. 9 C. & P. 366; R. v. Phillips, 8 C. & P. 736; nor of sodomy: R. v. Hartlen, 2 Can. Cr. Cas. 12; but he may be convicted of an indecent assault: R. v. Williams (1893), 1 Q.B. 320; R. v. Hartlen, supra; see Code 260; or of aiding and abetting another to commit any of the above offences: 1 Hale, P.C. 630.

A boy under 14 years cannot be convicted of an unnatural offence: R. v. Hartlen, supra; R. v. Allan, 1 Den. C.C. 364.

A person over 14 years old, is presumed to have capacity to commit any crime and to be responsible for his action. unless the contrary is proved: R. v. Owen, 4 C. & P. 236:

see also R. v. Wilson, 5 Q.B.D. 28; R. v. McDonald, 15 Q.B.D. 323; Lovell v. Beauchamp (1894), A.C. 607.

For the statutory provisions for the trial of juvenile offenders, and as to offences against children, see "Juvenile Offenders," post.

Idiots and Insane Persons.—No person can be convicted of an offence who is labouring under either natural imbecility or disease of the mind, so as to render him incapable of appreciating the nature and quality of the offence, and of knowing that it was wrong: Code 11; nor a person otherwise sane, but having specific delusions; if the delusions caused him to believe in the existence of a state of things which, if it actually existed, would justify what he did: Code 11 (2).

Everyone is presumed to be sane until the contrary is proved: Code 11 (3).

Drunkenness.—Involuntary drunkenness is in the category of insanity if it was of such a degree that the accused was incapable, even for a time, of distinguishing right from wrong; but voluntary drunkenness is no excuse: 1 Hale, P.C. 32; and acts committed under delirium tremens, although the result of voluntary drunkenness, are not criminal: *Ib.*, R. v. Davis, 14 Cox, C.C. 563. But even voluntary drunkenness is a factor in considering the question of intention, when that is an essential ingredient of the crime.

Married Women.—There is now no presumption that a married woman committing an offence in her husband's presence does so under compulsion: Code 13.

The only defence on the ground of compulsion is that provided by Code 12, as to which see ante p. 164; and see "Accessories" post.

All the common law rules as to justification are preserved by Code 7, except where varied by the provisions of the Criminal Code.

CHAPTER XI.

CONDITIONAL JURISDICTION.

Prosecutions under the Criminal Code, ss. 77, 78, 100, 131, 363, 370, 476, cannot be commenced without the leave of the Attorney-General: see ss. 543 to 549 of the Cr. Code.

The "Attorney-General" means in Ontario, the Attorney-General for that Province: Code 3 (b).

Prosecutions under Code 256 or 257 cannot be commenced without the consent of the Minister of Marine and Fisheries: Code 546, which is added to the Criminal Code by 56 Vict. (Dom.), c. 32.

Those under the Seaman's Act, R.S.C. c. 74, if either party is a foreigner belonging to a foreign ship which is concerned in the proceedings, cannot be commenced unless by the consent of the parties or of the consul or agent of the country to which the ship belongs: R.S.C. c. 74, s. 129.

Consent to the prosecution must be obtained before the preliminary proceedings before the magistrate are commenced: R v. Barnett, 17 O.R. 649; except as provided in Code 545, for the offence therein mentioned, and except in the case of an offence committed on board ship, in which case the Imperial statute, 41 & 42 Vict., c. 73, s. 3, expressly provides that it is not so required. The consent must be given by the official named, and his authority cannot be delegated: Abrahams v. The Queen, 6 S.C.R. 10.

A witness coming to Canada to give evidence under privilege from arrest, cannot be prosecuted for any offence previously committed by him, but is not exempted from prosecution for any offence he may commit while present in Canada to give evidence: Ex p. Ewan, 2 Can. Cr. Cas. 279.

CHAPTER XII.

GENERAL JURISDICTION.

Subject to the foregoing considerations a justice's jurisdiction to bring before him at any time, any person charged with any offence, extends to the following cases:—

Offences Committed in the Justice's County.—(1). Any indictable offence whatever, charged as having been committed within the justice's county, no matter where the accused may happen to be, and whether in any part of Canada or elsewhere: Code 554 (b); R. v. Blythe, 1 Can. Cr. Cas. 284. Where goods have been obtained in Quebec by false pretences made in Ontario the party procuring the goods may be prosecuted in Quebec: R. v. Gillespie, 1 Can. Cr. Cas. 551; R. v. Gillespie (No. 2), 2 Can. Cr. Cas. 309. Where goods were obtained in England under false pretences made in Scotland it was held that the offence consisted in obtaining the goods, and not in making the false pretences, and the party was liable for prosecution in England; and so even if the false pretences were made in a foreign country: R. v. Ellis (1899), 1 Q.B. 230.

Cases under the justice's summary jurisdiction must, unless otherwise directed by the Act relating to the offence, be brought before a justice for the territorial jurisdiction in which the offence was committed, and may be so brought, no matter where the accused may be: Code 842.

But any one who aids or abets in the commission of such offence may be proceeded against before a justice either for the county where the principal offender may be convicted, or in that in which the aiding or abetting was committed: Code 842 (2).

These provisions of Code 842 (2), apply also to summary prosecution for offences against Ontario laws: R.S.O. c. 90, s. 2.

Writing or mailing a threatening letter in one county to a person in another, is an offence in the latter county as well as in the former county: R. v. Girdwood, 2 East, P.C. 1120; R. v. Burdett, 4 B. & Ald. 95; R. v. Essex, 2 East, P.C. 1125; 3 Russ. on Cr., 6th ed., 722 (p).

In cases of false pretences the crime is completed where the goods are obtained: R. v. Cooke, 1 F. & F. 64; R. v. Holmes, 15 Cox, C.C. ?43.

If Accused in the Justice's County—but Offence Committed Elsewhere.—(2). The justice's jurisdiction extends to indictable offences (but not to cases under the summary jurisdiction clauses), committed or partly committed anywhere in the Province of Ontario (although outside the justice's county), if the accused resides, or is found or apprehended or is in custody in the justice's county: Code 554 (a), 640.

The indictable offence must have been committed, or partly committed in the justice's province, and if the offence was committed wholly in another province, even if the accused is in the justice's county, a justice in the latter has no jurisdiction: Code 640.

The case of a proprietor, editor or publisher of a newspaper charged with publishing a defamatory libel, may be tried in the province in which he resides or in which the newspaper is printed: Code 640 (2).

Such case would also be within the provisions of Code 553 (b), having been begun within one magistrate's jurisdiction and completed in another if within the same province.

In the case of an indictable offence committed in one county, and the accused is prosecuted under the above sections in another county in the same province, the justice in the latter may, if he sees fit, send the accused by warrant (Form A to the Cr. Code) to any justice for the county in which the offence was committed: Code 557. But he is not obliged to do so: R. v. Burke, per Falconbridge, C.J., 7th July, 1900.

The constable in such case, is to take the depositions and papers, with the accused, to any justice for the county where the offence was committed, and such justice ill continue the case as if it had been begun before him: Code 557 (2).

A justice has no jurisdiction whatsoever over an indictable offence not committed in his county, unless the accused is in the county; (except in cases in unorganized districts: Code 555, see post p. 170); and even if the accused should be brought before such justice on a summons or warrant, he does not thereby waive the objection so as to come within the justice's jurisdiction: Paley, 6th ed. 31; Johnston v. Colam, L.R. 10 Q.B. 544.

Unlawfully Receiving.—(3). The justice's jurisdiction also extends to cases in which the accused is charged with unlawfully receiving, anywhere, property which has been unlawfully obtained within the justice's county: Code 554(c); and in cases in which the accused has in his possession in the justice's county property stolen either in Canada or a foreign country, the accused may be brought before such justice: Code 554(d).

Offences Committed on Boundaries of Counties.—(4). In cases of offences committed on any boundary between two counties, or in any water, tidal or otherwise, or on any bridge between two or more counties, or anywhere within 500 yards of the boundary, a justice of either county has jurisdiction: Code 553 (a) and (b), as amended by the Act of 1900, c. 46.

The 500 yards is measured as the crow flies," or in a direct line from the boundary; and not by road unless it is in a direct line: (See cases cited post "Execution of Warrants."

(5). If an offence is begun in one county and completed in another, even if in different provinces, a justice for either county has jurisdiction: Code 553 (b).

A person charged with an offence begun by mailing a fraudulent statement in a county in Ontario to a person in Quebec, may be brought before a justice either for the county where the letter was mailed or for that where it was received: Code 553 (b); see R. v. Blythe, 1 Can. Cr. Cas. 284 notes; R. v. Ellis (1899), 1 Q.B. 230; R. v. Bulley, cited 4 B. & A. p. 179; Pearson v. McGowran, 3 B. & C. 700.

Offences Regarding the Mails or Travellers.—(6.) Offences relating to the mails, (see Post Office Act R.S.C. c. 35,) or a mail carrier, or a letter, or anything sent by mail, or an offence upon a person, or in respect of property in or upon a vehicle, (public or private, R. v. Sharpe, Dears, C.C. 415,) employed on a journey, or on a vessel employed on a navigable river, canal or any other inland navigation, may be brought before any justice in the county through which the same passed, or if it passed along a boundary of two counties, a justice in either county may act: Code 553 (c). As to what are offences "in or upon a vehicle:" see R. v. Sharpe, 2 Lewin, C.C. 233.

(7). A person aiding or abetting in one county an offence committed in another, and punishable on summary conviction, may be brought before a justice in either county: Code 842 (2).

Offences Committed in Unorganized Districts.—(8). A person committing an offence in any unorganized district in Ontario, or on any lake or river not embraced in any organized district, may be brought before a justice for any county in Ontario, and dealt with as if the offence was committed in the justice's county: Code 555.

Fugitive Offenders.—(9). If an offence is committed in any part of His Majesty's Dominions, other than Canada, and the offender is suspected of being in Canada, or on his way here, any justice in Canada may take an information and issue a "provisional warrant" to bring the offender before him for examination with a view to his surrender under the Fugitive Offenders Act: R.S.C. c. 143, s. 6.

The justice on issuing such warrant is to report it, with a certified copy of the information, to the Governor-General (through the Department of the Minister of Justice) and the warrant may be executed in the county of the justice who issued it; or in any other place in Canada, on its being "backed" if in another county, as described in the Chapter on "Proceedings before Magistrates": s. 6.

The fugitive on being arrested is to be brought before the justice who issued the warrant, or who "backed" it, or any other justice, whose duty is thereupon to remand the fugitive to gaol, from time to time, for a reasonable time, not exceeding seven days on any one remand, pending the arrival of the warrant (called an 'endorsed warrant"), for the fugitive's arrest, issued in the county where the offence was committed, and endorsed by the Governor-General of Canada, or any judge of any court in Canada, as described in s. 5: s. 7 (4).

Form of remand given in the Schedule 1 to the Cr. Code may be used, making necessary changes; or, instead of remanding the fugitive to gaol, the justice may take bail: s. 7 (1).

On the arrival and production to the justice of the "endorsed warrant" above mentioned, the justice will proceed with the case and take evidence as if the offence was committed within the justice's jurisdiction, and the proceedings and forms will be similar to those on a preliminary inquiry as described, post 185.

If the evidence raises a "strong or probable presumption" that the fugitive committed the c fence charged, and that it is one of those referred to in s. 5 viz.: treason, piracy or any

other offence whatever which is punishable in the place where it was committed, even if it was not a crime or offence under Canadian law, the justice is to commit the offender to gaol to await his surrender to the authorities of the country where the offence was committed: ss. 3 and 7.

The justice is also to inform the fugitive that he will not be surrendered till after 15 days, and that he has the right to apply for a writ of habeas corpus, or other like proceeding: s. 7 (3). And the justice is also forthwith to send a certified copy of the committal, with such report of the case as he thinks fit, to the Governor General, through the Department of Justice, Ottawa: s. 7 (2).

Any justice also has authority, on the "endorsed warrant" being produced, to issue a search warrant for property stolen or unlawfully taken or obtained: s. 12.

For forms and proceedings in regard to search warrants, see post: "Search Warrants."

The fugitive may be arrested upon an "endorsed warrant," received from the place where the offence was committed, without any "provisional warrant" under s. 6, being issued, and the justice before whom the fugitive is taken will, in such case, at once proceed to take evidence and commit the fugitive as above indicated; and any justice in Canada may act: s. 14.

The justice may take any depositions for the purpose above mentioned, in the absence of the person accused: s. 16. But this should only be done if it is unavoidable. As to the authentication of warrants and other documents: see s. 18.

Offences Committed at Sea.—All persons of whatever nationality, on board any ship, British or foreign, in any Canadian port, are amenable to Canadian laws, being on Canadian territory. By virtue of Imperial statute, 41 & 42 Vict., c. 73, this is extended to the territorial waters of British possessions; that is, within three marine miles of the coast, measured from low water mark: see ss. 2 and 7 of that statute.

The leave of the Governor General must be obtained in the case of a charge against a foreigner, for an offence committed within the three-mile limit, before the accused is tried, but not before he is apprehended, and committed for trial: s. 3; see ante p. 166, and Code 542 also requires such leave to be obtained when the offender is not a British subject, before any prosecution is begun for any offence committed within the Admiralty jurisdiction.

The above Imperial Act expressly applies to all British possessions and is in force in Canada: Code 5, and a justice will proceed in such case in the same way as it the particular offence was committed within his ordinary jurisdiction.

The Merchant Shipping Act, 1894, Imp. stat., 57 and 58 Vict., c. 60, gives extensive jurisdiction to courts in British possessions, including Canada. Section 684 provides that every offence against that Act shall, for the purpose of giving jurisdiction, be deemed to have been committed either in the place where it was actually committed, or in any place where the offender may afterwards be found.

So, anyone contravening anywhere, any provisions of that statute, and aftewards being found in Canada, even if brought here as a prisoner by force (R. v. Lopez, 27 LJ.M.C. 48), may be dealt with here as if the offence had been committed in the county or place in Canada where the offender is so found.

Sec. 685 gives to courts, justices and magistrates, for any district or place abutting on any lake, river or navigable water, jurisdiction over any vessel being in or near such lake, river or navigable water, and over all persons on board or belonging to such vessel, as if the vessel or persons were within the limits of the original jurisdiction of the court, justice or magistrate. This applies to all offences whether triable summarily or indictable; and any offence committed on such vessel, or by any one on or belonging to her, which would, if committed in Ontario, be an offence against the laws in force there, may be dealt with (as if it were committed in Ontario) by any justice for any district abutting on the lake, river or water on or near which the vessel was when the offence was committed.

Sec. 686 provides, that if a British subject commits an offence on a British ship on the high sea, or in any foreign port or harbour, or on board any foreign ship to which he does not belong; or if any person who is not a British subject commits an offence on board a British ship on the high sea; and such person is afterwards found in any British possession, the courts there have jurisdiction to try the offence as if it had been committed within the limits of their ordinary jurisdiction.

So that a justice for the place where the accused is found, may proceed in such case, as he would in the case of an offence committed in his county.

Sec. 687 further provides, that all offences against property or person committed at any place, afloat or ashore, out of British dominions, by any master, servant or apprentice who is then, or was within three months employed on any British ship (whether such person is a British or foreign subject), shall be deemed to be offences of the same nature, and be liable to the same punishment, and be enquired into and tried in the same manner, and by the same courts, as if the offence was committed within the jurisdiction of the Admiralty of England.

So that an offence by such master, seaman or apprentice, committed out of British dominions, may be dealt with in Ontario, just as if the offence had been committed in the justice's county in Ontario; if the offender is found there.

Sec. 711 also provides, that any offences under the Act shall be punishable in any British possession, by any court or magistrate by whom an offence of the like character is ordinarily punishable, or in such other manner as may be determined by any local Act or law in such British possession. The local courts, and local laws, are applied.

By s. 689 a British consular officer is empowered to send any master, seaman or apprentice who is, or was within three months, master, seaman or apprentice on a British ship, and who commits an offence, at any place, affoat or ashore, out of His Majesty's dominions, or any master, seaman or apprentice belonging to any British ship, who commits any offence on the high sea, in custody to any British possession, to be proceeded against before any court capable of dealing with the offence.

A justice before whom such offender is brought will proceed as if the offence was committed in his own county.

Section 712 makes all the provisions of the above statute, from section 680 to section 712, applicable to all British possessions, unless otherwise provided.

Section 745 repeals all previous statutes on the subject except 41-42 Vict., c. 73, above referred to, and 12-13 Vict., c. 96.

By the provisions of a 1 of the latter statute, which is expressly preserved in force by s. 686 of the above Imperial Act of 1894, any offence committed upon the sea or within the jurisdiction of the Admiralty, shall, in any British colony where the person is charged with the offence or brought there

for trial, be dealt with as if it had been committed within the limits of the local jurisdiction of the courts of criminal jurisdiction of such colony; and by s. 3 of the same statute, if any person dies in any colony in consequence of having been fetoniously hurt or poisoned upon the sea, or within t..e limits of the Admiralty, or at any place out of the colony, the offence may be dealt with in such colony as if it had been wholly committed there.

The Great Lakes .- The great lakes are within the Admiralty jurisdiction, being a place where great ships go to and from the high sea, and anyone committing an offence aboard a British ship, whether within Canadian or American waters, is amenable to Canadian law, and may be tried in

Canada: R. v. Sharp, 5 P.R. 135.

Canadian ships are British ships, and the above Imperial

statutes apply to them: s.c.

A British ship is part of British territory and has been likened to a British floating island; and a foreigner as well as a British subject, committing an offence on board a British ship on the high sea, or in any foreign haven, river or place, where great ships go, commits such offence within the jurisdiction of the Admiralty and is amenable to British laws; and under the above statutes he may be tried before any court within whose territorial jurisdiction he may afterwards happen to be found, or brought: R. v. Lopez, 27 L.J.M.C. 48; R. v. Anderson, L.R. 1 C.C. 161; R. v. Carr, 10 Q.B.D. 76; Russell on Crimes, 6th ed. 19.

By the above statutes power is given to Canadian courts to try the offender, and the law applicable to the offence is

that in force in Canada.

By section 560 of the Canadian Cr. Code, any justice for the territorial division in which a prisoner charged with committing an offence within the jurisdiction of the Admiralty of England is suspected to be, may issue a warrant, Form D. to the Cr. Code, and the offender may be dealt with in the manner directed by the provisions of the Cr. Code in regard to preliminary inquiries into indictable offences; as to which see infra.

Such warrant may be "backed" and executed in another

county: see infra.

Proof that the ship was a British ship need not be by producing the register, but it is sufficient to shew that the ship belongs to British owners, and carries the British flag: R. v. Allan, 10 Cox, C.C. 405; R. v. Severg, L.R. 1 C.C. 264; R. v. Jornsen, 10 Cox, C.C. 74.

Offences Committed out of Canada.—The provisions of the Imperial statutes above referred to give jurisdiction to the Canadian courts over the class of offences above alluded to, although they are committed out of Canada.

The general rule of law is that all crime is local, and the jurisdiction over crime generally belongs to the country where the crime is committed, and except over British subjects His Majesty and the Imperial Legislature have no power whatever, otherwise than by treaty, over persons not in British dominions; and the Canadian Parliament has no jurisdiction, under the B.N.A. Act, to legislate, nor have Canadian courts any authority in regard to offences committed wholly out of Canada, by a person who is not a British subject: Shields v. Peak, 8 S.C.R. 579; R. v. Pierce, 13 O.R. 226; R. v. Plowman, 25 O.R. 656; McLeod v. Attorney-General, N.S.W. (1891), A.C. 455; Low v. Routledge, L.R. 3 H.L. 100.

As to the offences (other than those above referred to, namely, those committed at sea and by fugitives from justice from other parts of His Majesty's dominions), committed wholly out of Canada, by a British subject, resident in Canada, it is still questionable whether the Dominion Parliament has been given, by the B.N.A. Act, authority to legislate: see Re Bigamy, 27 S.C.R. 461; and notes in 1 Can. Cr. Cas. 203.

CHAPTER XIII.

POWERS OF JUSTICES AND MAGISTRATES WHILE HOLDING COURT.

Contempt of Court.—The authority and powers of magistrates and justices to regulate the proceedings and enforce order in their courts, and to deal with persons guilty of disorderly or insulting words or conduct or other contempt of court, is fully described in the case of Young v. Saylor, 23 O.R. 513, affirmed on appeal, 20 A.R. 645, and the authorities on the subject are cited and discussed in the original case.

The general effect of the decision in that case, and of the authorities cited in it, may be stated as follows:

A Justice's Authority.—Any judicial officer (which includes a justice of the peace when trying a case or performing other judicial acts, (but not while doing merely ministerial acts) has impliedly authority, without formal proceedings, to order the removal and exclusion from the place where the trial is being held, of all persons who interrupt or obstruct the proceedings by any disorderly conduct, insulting words, or in any other way; such authority being indispensable for the proper exercise of the officer's judicial functions.

But it has never been decided, and is very questionable, whether a justice has power (not being a Court of Record, and his authority being limited to that expressly given by statute, and no statute having given him the power) to summarily punish by fine or imprisonment a contempt, even if it is committed in facie curiæ; and he certainly cannot do so by a mere verbal order, without a formal hearing and adjudication and warrant setting out the contempt.

But the offender, or any one assisting him, may be indicted for a breach of the peace, or for obstructing a "peace officer" (which includes a justice: Code 3 (s)) in the exercise of his duty, whether judicial or ministerial: Code 144 (2).

A justice has no authority to deal with any person for insulting words used behind the justice's back, out of court; but only for words or conduct in his presence, and by means of which the proceedings and order are disturbed: R. v.

Lefroy, L.R. 8 Q.B. 134; R. v. Weltje, 2 Camp. 142; R. v. Brompton Judge (1893), 2 Q.B. 195.

The justice should be careful that the misconduct justifies the order for exclusion; and that he has not by his own words or conduct been to blame: see Clissold v. Machell, 25 U.C.R. 80; 26 U.C.R. 422.

For a person to say of a justice in court in reference to his judgment, "That is a most unjust remark," is a wilful insult and contempt: R. v. Jordan, 36 W.R. 589, 797; or to reflect in any way on the honesty or impartiality of the justice: R. v. Skipworth, 12 Cox, C.C. 371.

In case a justice orders, as he has the right to do, the exclusion of a person acting in an improper manner, it would be better to issue a written order or a warrant under seal, to a constable, authorizing such exclusion and stating the grounds and the particulars of the contempt or other improper conduct.

Police Magistrate's Authority.—The authority of a police, stipendiary, or district magistrate while holding court, is very much more extensive than that of a justice.

By s. 908 of the Criminal Code, such magistrate has the same power and authority to preserve order in cou ', and by like ways and means, as may be exercised and used in like cases, and for the like purposes, by any court in Canada, or by the judges during the holding of the court: see also Code 800.

The power given includes punishment for contempts committed "during the holding" of the court, but there is no power to proceed for contempts committed out of court: Re Scaife, 5 B.C.R. 153; Re Pacquette, 11 P.R. 463; Re Elliot, 41 Solicitors' Journal, 625; R. v. Surrey Judge, 13 Q.B.D. 963, and cases supra.

A magistrate has power, not only to expel and exclude by force, but also to commit a person guilty of contempt by insultin, him, or otherwise, when acting in his judicial capacity, but not when acting ministerially: 3 Burns' Justice, 30th ed., p. 160; see also Young v. Saylor, 23 O.R 513. As to what are "judicial" and what "ministerial" acts, see ante pp. 61, 62, 147.

But a person who obstructs a magistrate or justice in the exercise of his duty, whether judicial or ministerial, may be prosecuted under Code 144, s.-s. 2 (a).

A small room communicating with the court room is not open court: Kenyon v. Eastwood, 57 L.J.Q.B. 454.

It is not clear that a magistrate can punish for contempt committed while he is executing his duty in his own house, and not proceeding in any "court:" McKenzie v. Mewburn, 6 O.S. 486; and the same case decides that if a magistrate commits a person for contempt, he must regularly convict; that is, he must call upon the party to defend himself, and shew cause why he should not be convicted; and should at once enter an adjudication convicting the party and awarding punishment; and he should issue a formal warrant of commitment under his hand and seal, and setting out the contempt.

The nature of the insult need not be stated: Levy v. Moylan, 10 C.B. 189; but upon such committal on a duly issued warrant setting out the facts of the contempt, the High Court, while it has jurisdiction to intervene and prevent any usurpation of jurisdiction, by the magistrate treating as a contempt that which there is no reasonable ground for so treating, yet it has no jurisdiction to act as a court of appeal from the magistrate's finding upon a matter of fact, nor to review the facts stated in the warrant; but, on the other hand, if there is no formal warrant issued, the magistrate must establish such facts as will justify his course, if it is questioned: R. v. Jordan, 36 W.R. 589; Ex p. Porter, 5 B. &S. 299; Ex p. Lees and Judge of Carleton, 24 C.P. 214; Young v. Saylor, 23 O.R. 513, and cases cited.

The committal should therefore be by warrant setting out the facts constituting the contempt.

The committal must be for a definite period: Ex p. Porter, 5 B. & S. 299, and other cases above cited.

There is no power to award hard labour.

The exercise of the power of exclusion or punishment for contempt should be done with great forbearance, and not hastily, or under feelings of exasperation, however natural; but with the sole view to the maintenance of proper order and decorum during the prosecution of the officer's judicial proceedings: Heywood v. Wait, 18 W.R. 205; Day v. Carr, 7 Ex. 887.

If the magistrate in the exercise of his jurisdiction, is defiantly disobeyed he may commit the offender instantly for contempt: Watt v. Ligertwood, L.R. 2 H.L. (S.C.) 361.

The contempt may be shewn either by language or manner, and even by language which might not in itself be offensive, if it is uttered offensively: Carus Wilson's case, 7 Q.B. p. 115; Ex p. Lees and County Judge, Carleton, 24 C.P. 214; Re The Judge of the Division Court, Toronto, 23 U.C.R. 6.

A person indemnifying another against the consequences of contempt involves himself in the same: Plating Co. v. Farquharson, L.R. 17 Ch. 49.

A Coroner's Authority.—A coroner's court is a Court of Record and he may order a person guilty of contempt or interruption of the proceedings to be excluded by force after refusal to depart: Garnet v. Ferrand, 6 B. & C. 611; Garner v. Coleman, 19 C.P. 106: Agnew v. Stewart, 21 U.C.R. 396.

On a summary trial before a justice or magistrate, the place is an open court, and all persons have the right of access so far as there is room: Code 794, 849, subject to removal for improper behaviour.

But on a preliminary inquiry, the place is not an open court; and the magistrate or justice may exclude all persons, other than the parties and their counsel or solicitor, if it appears to him that the ends of justice will be best answered by so doing: Code 586 (d); and he may even exclude the counsel or solicitor for gross contempt or impropriety by which the hearing is obstructed: Colter v. Hicks, 2 B. & Ald. 663.

In such event it would be necessary to adjourn the case to afford the party an opportunity to obtain other counsel, to which he has the right under Code 850, 793, 586 (d).

Juvenile Offenders.—In trials of juvenile offenders under 16 years old, the Dominion statute, 1894, c. 58, s. 1, provides that such trials are to take place without publicity; and by Dominion statute, 1900, c. 46, s. 550 (a), it is provided that the magistrate or justice may order that the public be excluded in any case, if it is in the interests of public morals.

Ordering Witnesses out of Court.—A justice or magistrate may order all witnesses out of court, at the commencement or at any time during the course of the proceedings: Southey v. Nash, 7 C. & P. 632; R. v. Murphy, 8 C. & P. 297. The attorney for either party is not within the rule: Pomeroy v. Baddeley, Ry. & M. 430; but he has no jurisdic-

tion to punish them for disobedience of the order, or to forcibly exclude them; nor to refuse to receive their evidence, if they do not go out when ordered, or if a witness should afterwards come in to court after such order has been made; but that fact, and the fact that he may have heard the evidence of another witness in the case, will be weighed by the court in considering the credit to be given the testimony of the witness who has thus disobeyed the order: Cobbett v. Hudson, 1 E. & B. 11, at p. 14; see also R. v. Colley, M. & M. 329; R. v. Brown, 4 C.P. 588 (n); Chandler v. Horn, 2 M. & Rob. 423.

The following is a form of commitment:-

WARRANT OF COMMITMENT FOR CONTEMPT.

Canada, Province of Ontario, County of

To all or any of the Constables and other Peace Officers in the County of , and to the Keeper of the common gaol at , in the said County of .

Whereas, on the day of , A.D. 19, at the of, in the County of , one, C.D., was brought before me, E.F., then and yet a Police (or Stipendiary) Magistrate in and for the of, and the said C.D. was then charged before me, upon the information of one, A.B., that he, the said C.D. (set out the charge).

And, whereas G.H., maliciously intending and contriving to scandalize and villify me, the said E.F., as such Police (or Stipendiary) Magistrate aforesaid, and to bring the administration of justice in this Province into contempt, afterwards, and during the hearing of the said charge, and whilst I, the said E.F., was examining and taking the depositions of divers witnesses against the said C.D. in that behalf, to wit, on the day and year aforesaid, wickedly and maliciously in the open court and in the presence and hearing of divers subjects of our lord, the King, did publish, utter and pronounce, declare and say with a loud voice to me, the said E.F., and whilst I was so acting as such Police (or Stipendiary) Magistrate as aforesaid (here set out the language used, as for instance "That is a most unjust remark,") to the scandal and reproach of the administration of justice in this Province, and to the great scandal and damage of me, the said E.F., as such Police (or Stipendiary) Magistrate, in contempt of our said lord, the King, in open violation of the laws of this Province, and to the evil and pernicious example of ail others in like case offending.

And whereas the said G.H. having been then and there duly required and called upon by me, as such Police (or Stipendiary) Magistrate (or having been duly served with a summons commanding him to be and appear before me on the day of ,A.D. 19, at o'clock in the forenoon), to answer the said contempt, and to be dealt with according to law, after hearing the said G.H. and his Counsel (or Solicitor): (or if served with a summons and the party fails to appear: and the said G.H. having neglected to be and appear at the time and place appointed, although it has been proved to me upon oath that the said G.H. was duly summoned in that behalf): I did adjudge that the said G.H. was guilty of the said contempt, and I did further order and

adjudge the said G.H. should for his said offence forfeit and pay the sum of \$\\$, to be paid and applied according to law, and that in default of such payment being made forthwith, the said G.H. should be committed to the common gaol of the said County of for the term of days, unless the said fine should be sooner paid.

And whereas the said G.H. did not pay the said fine in obedience to said order: these are therefore to require and command you, the said Constables or Peace Officers, or any one of you, to take the said G.H., aforesaid, and there to deliver him to the Keeper thereof together with gaol, to receive the said G.H. into your custody in the said common gaol, there to im: son him for the term of days, from the time of his arrest under his warrant, unless the said fine amounting to the sum of its sooner paid, and for your so doing this shall be your sufficient warrant.

Given under my hand and Seal this 19, at, in the County of

day of

, in the year

E.F. [Seal.]

Police Magistrate at in the County of

CHAPTER XIV.

JURISDICTION BY CONSENT OR WAIVER.

It is a common understanding, almost amounting to a legal maxim, that in criminal cases, at least those of a more serious character, (such as those formerly known as felonies)

a prisoner can admit nothing.

"The object of a trial in a criminal case is the administration of justice in a course as free from doubt or chance of miscarriage as merely human understanding of it can be—not the interests of either party": Attorney-General v. Bertrand, L.R. 1 P.C. at p. 534; see also cases cited in R. v. St. Clair, 27 A.R. 308. But in cases formerly classified as misdemeanors, admissions may be made: R. v. Foster, 7 C. & P. 495, Roscoe, 12th ed., 120.

It has, however, been provided by Code 690 that on the trial for an indictable offence the accused or his counsel may admit any facts, so as to dispense with proof; and this applies to a trial of indictable offences before magistrates under secs.

782-791 of the Code: R. v. St. Clair, 27 A.R. 308.

In the case of Attorney-General v. Bertrand, supra, it was held that the consent of the accused to the mode of taking the evidence on a second trial, by reading to the witnesses the notes of their evidence taken on a former trial instead of taking it again in the usual way, did not justify such a course which was one likely to cause a substantial miscarriage of justice; and that the trial so conducted was invalid, notwithstanding such consent.

Nor is the absence of specific objection a waiver of objection on the part of a person who, happening to be present, is unexpectedly, and without previous notice, called on to answer a charge against himself; such a proceeding being against natural justice and so an excess of jurisdiction: R. v.

Vrooman, 3 Man. R. 509.

And even independently of the Lord's Day Act, a justice has no jurisdiction to take judicial proceedings on Sunday, even if both parties consent: Taylor v. Phillips, 3 East, 155.

Where there is absolutely no jurisdiction over the subject matter, no consent or waiver can give it: Jones v. Owen, 5 D. & L. 669; R. v. Tolley, 3 East, 467; Buse v. Roper, 41 L.T. 457; Knowles v. Holden, 24 L.J. Ex. 223; Lee v. Cohen, 71 L.T. 824; Foster v. Underwood, 3 Ex. D. 3; Farquharson v. Morgan (1894), 1 Q.B. 552; R. v. Essex (Jus.), (1895) 1 Q.B. 38.

For instance a justice has no jurisdiction at all over a defendant not found in his county, and who is charged with an offence committed outside his county, even if the defendant appears without objection, or even if he consents: Paley, 7th ed. 109: Johnston v. Colam, L.R. 10 Q.B. 544; R. v. Herbert, 5 Q.R. 5 S.C. 424.

A consent to a trial before a person who has, by law, no jurisdiction, will not give it, and the trial is invalid: Smith v. Brown, 2 M. & W. 851; Lawrence v. Wilcock, 11 A. & E. 941.

If, however, there is jurisdiction over the subject matter, defects or even contingencies affecting jurisdiction, may be waived by taking a step in the matter without objection: Taylor v. Best, 1½ C.B. 487; Forbes v. Smith, 10 Ex. 717; Re Jones v. James, 19 L.J.Q.B. 257; Stamforth v. Richmond, 13 W.R. 724; Moore v. Gamgee, 25 Q.B.D. 244; Lee v. Cohen, 71 L.T. 824; Re Guy v. G.T.R., 10 P.R. 372; Re Soules v. Little, 12 P.R. 533; and in order to prevent fruitless litigation and merely technical objections regarding mere matters of procedure being raised after conviction, they must be taken before the justice at the trial: Code 882.

So if defendant appears, he waives any defect in the information and proceedings, and even the total absence of any information or process—unless such was by the particular statute relating to the offence made essential to the justice's jurisdiction: R. v. Hughes, 4 Q.B.D. 614; Dixon v. Wells, 25 Q.B.D. 249; Turner v. Postmaster-General, 41 L.J.M.C. 10; R. v. Clarke, 20 O.R. 642; Re Merchants Bank v. Van Allen, 10 P.R. 348; Ex p. Sonier, (S.C.N.B.) 2 Can. Cr. Cas. 121.

The facts stated in R. v. Vrooman, 3 Man. R. 502 (cited in 2 Can. Cr. Cas. 93) were held, I wever, not to amount to waiver of process.

The objection that two offences are included in one information, is waived by not being taken before the justice:

R. v. Hazen, 20 A.R. 633; Rodgers v. Richards (1892), 1 Q.B. 555.

If an adjournment is made for more than eight days, contrary to Code 586 and 857, it is waived if defendant consented; or if he appears on the adjourned hearing: R. v. Heffernan, 13 O.R. p. 626.

The provision that the justice's adjudication aust be announced in open court in the presence of the parties may be waived: Chase v. Sing, 6 B.C.R. 454; and if the trial is conducted in an irregular, but not an improper manner, without objection, the defendant waives it: Re Jones v. Julian, 28 O.R. 601.

The objection that the case is required to be tried by two justices instead of one is waived by non-objection: R. v. Starkey, 7 Man. R. 489; Re Crow, 1 L.J.N.S. 302; Graham v. McArthur, 25 U.C.R. 478; or that the justice's jurisdiction had been ousted: R. v. Salop (Jus.), 2 E. & E. 386; or that the justice is disqualified by interest: Wakefield v. West R. Ry. Co., L.R. 1 Q.B. 84. Waiver must be an intentional act, with knowledge: Darnley v. L. C. & D. Ry., L.R. 2 H.L. 43; Re Marsden, 26 Ch. D. 784.

For instance, the objection that the justice was disqualified is not waived unless the party was aware of the disqualification: Lancaster v. Heaton, 8 El. & B. 952; R. v. Cambridge, 27 L.J.M.C. 166; R. v. Aberdare, 14 Q.B. 852.

A party who objects to the jurisdiction, does not waive it by taking part in the proceedings subject to objection: Re Brazill v. Johns, 24 O.R. 209; Blake v. Beech, 1 Ex. D. 320; Emeris v. Woodward, 43 Ch. D. 185; Hamlyn v. Betterley, 6 Q.B.D. 63; R. v. Nutt, (S.C.N.S.) 3 Can. Cr. Cas. 184; see Farquharson v. Morgan (1894), 1 Q.B. 552.

CHAPTER XV.

PROCEDURE BEFORE THE JUSTICE.

The matters over which a justice or magistrate has authority are of two classes; first, those in which he is charged with the duty of holding a preliminary inquiry with a view to the committal of the accused for indictment before a higher court.

Second, those in which the justice or magistrate may summarily convict the offender, and award punishment. All offences are to be dealt with either as indictable, or as the subjects of summary trial, according to the provisions of the particular statute, or clauses of the Cr. Code relating to such offences.

1. Preliminary Inquiries in Indictable Offences.

Information.—The first step to be taken by the justice is to prepare a written information: Code 558, according to Form C. at the end of the Cr. Code; Dominion Statutes for 1892, c. 29.

Any person, having reasonable and probable grounds for believing that an offence has been committed against the law, and which the law describes as an indictable offence, may lay an information before a justice, who will proceed to hold a preliminary inquiry, as provided by ss. 554 et seq. of the Cr. Code.

The nature and particulars of the offence require to be set out in the information; they are contained in the forms hereto. It is sufficient if the offence be stated in the words of the statute relating to it: Cr. Code Amendment Act, 1900, c. 46, s. 846. The information must in every case be signed by the complainant, and either sworn to: Code 558; or affirmed, if the complainant objects to swear on grounds of conscientious scruples, or for any of the reasons stated in s. 24 of the Can. Ev. Act, 1893, 56 Vict. c. 31.

In the case of affirmation the form as prescribed by s. 24, is as follows: "I, A.B. (name) do solemnly affirm that this information is true;" and, by the same section, the affirma-

tion is to have the same force and effect as an oath. The justice will then fill in and sign the jurat at the foot of the information, using the word "sworn" or "affirmed" according to the fact.

As to the form of charge for aiding the principal offender, after the commission of an offence, it is to be remembered that such aiding does not make the abettor liable to the charge was for aiding the principal before and in the commission of the offence: Code 61. In the case of the offence of aiding after such commission, he must be charged with being an accessory, under Code 63: R. v. Graham, 2 Can. Cr. Cas. 388; see post under the head of "Accessories."

Any number of persons accused, who are jointly concerned in committing an offence, whether as principal or as abettors before or in its commission, or as accessories after the fact, may be joined in one information: Code 61; Paley on Convictions, 6th ed., 78. But if thought advisable, separate informations may be made out, and separate processings taken against each offender: Paley, 78.

A justice has no authority to refuse to take an information from a person offering to make oath or affirmation to the commission of an indictable offence against the law, and over which the justice has jurisdiction: see remarks in the chapter on general jurisdiction, ante p. 167, and on "Manda-

mus," ante p. 62.

A justice cannot legally issue and will be liable in trespass if he issues any process, or causes the arrest of any person, without a sworn information being first duly laid before him (except in cases in which he is authorized to convict "on view" or "on suspicion," as to which see infra and McGuiness v. Dafoe. 27 O.R. 117, 23 A.R. 704; but by Code 577, when a person accused of an indictable offence is before a justice, whether voluntarily or on summons, or after being apprehended, with or without warrant, or while in custody for the same or any other offence, the justice is required to proceed with a preliminary inquiry into any offence with which such person is then charged. So if a person is before a magistrate on a charge, which the latter may try with the consent of the accused, but the accused does not consent, then the magistrate may proceed with the preliminary inquiry into that charge, or any other charge whatever, and the defendant may be committed for any offence which the evidence discloses. and the proceedings are not limited to the charge on which the defendant was summoned or arrested: R. v. Brown, (1895), 1 Q.B. 119.

Search Warrants.—When an information has been laid, the next matter for consideration usually is, whether the justice should be applied to for a search warrant. The common law right of search, which only applied to stolen goods: Jones v. German (1897), 1 Q.B. 374; has been extended by the Criminal Code and other statutes; and it is expedient, in many cases, to have a search warrant issued, with a view either of recovering stolen property, or of securing the implements which have been used in the commission of any crime, or of obtaining possession of anything which has been the subject of an offence, and which may be evidence of a very material character, in bringing it home to the guilty party.

If a search warrant is desired, a separate information must be laid: Code 569; see R. v. Cayanagh, 2 Can. Cr. Cas. 267. The sections of the Criminal Code relating to search warrants are 569 to 576.

There must have been an offence committed, or suspected on reasonable grounds; and it must be shewn that something upon, or in respect of which, such offence was committed, is in some building, receptacle or place described: Code 569 (a); or that there is something in such place, which it is believed, on reasonable grounds, will furnish evidence as to the commission of such offence: Code 569 (b); or which is intended to be used in committing an offence against the person, for which the offender may be arrested without a warrant: (See post p. 196); Code, 569 (c).

Offences against the person (Code 209 to 274 and 398) for which the offender may be arrested without a warrant, are the following: murder, attempts to murder, manslaughter, attempt t commit suicide, wounding, stupefying in order to commit an indictable offence, injuring or attempting to injure by explosive substances, intentionally or wantonly endangering persons on railways, preventing escape from a wreck, rape or attempted rape, defiling children under 14 years, abduction of a woman, robbery, assault with intent to rob, compelling execution of documents by force: see Code 552 and amendment of same by the Act of 1894, c. 40.

A search warrant cannot be issued for any property in regard to which there has been no offence committed or

charged: McNellis v. Gartshore, 2 C.P. 464; R. v. Doyle, 12 O.R. 347; R. v. Walker, 13 O.R. 83; R. v. Heffernan, 18 O.R. 616.

A search warrant for stolen goods may be issued even if the information does not expressly charge a theft to have been committed, if the fair intendment of the statements in the information is that there are reasonable and probable grounds for suspecting, and that the informant does suspect, a theft to have been committed: Jones v. German (1897), 1 Q.B. 374. And it is not necessary that the particular goods should be set forth: same case.

In executing a search warrant the officer must take the warrant with him: Codd v. Cabe, 1 Exch. D. 352; and must make demand to open the door before breaking into a house. He should explain that he is an officer and has a warrant to search; but he is not bound to give any preliminary explanation of the purpose of the search. A formal demand of admission by an officer is sufficient, before breaking in: R. v. Sloan, 13 A.R. 482. The warrant cannot be "backed," nor can the goods be taken into another county: Hoover v. Craig, 12 A.R. 72; but search warrants may be issued in several counties where articles liable to be searched for are reasonably suspected to be.

As to the disposal to be made by the justice, of anything seized and brought before him under a search warrant: see

Code 569, ss. 4-10.

Search warrants may be also issued upon an information for mined minerals unlawfully deposited in any place: Code 571; or to search a house of ill fame for any woman or girl who has, contrary to Code 185 (b), been enticed or inveigled into such place: Code 574. In the latter case the information must be sworn to, and must be laid by the parent, husband, master or guardian, or if none, then by any person; and the warrant may a enforced by day or night, and after demand, entry may be made by force. The constable is to bring such woman or girl and the person in whose custody she is, before the justice, who will then proceed with a preliminary inquiry into the charge.

Search warrants may also be issued to search gaming or betting houses, or places where lotteries or the sale of lottery tickets, (Code 205), is carried on: Code 575, as amended by the Act of 1894, c. 40, s. 1. A common gaming-house is

defined by Code 196, as amended by the Dominion Act, 1895, c. 40; and a common betting house is defined by Code 197, as amended by the same statute: see also Code 201 (3).

Search warrants may also be issued for vagrant and disorderly persons, under Code 207: see Code 576 as to vagrants.

Search Without Warrant.—A constable or police officer has authority to search, without warrant, for public stores which have been stolen, if he is deputed to do so by any public department: Code 570; or for timber or lumber improperly detained without the knowledge of the owner: Code 572; also under Wreck and Salvage Act, R.S.C. c. 81, s. 41: under Fugitive Offenders Act, R.S.C. c. 143, s. 12; under the Act for the Preservation of the Peace near Public Works; for weapons,-R.S.C. c. 151, s. 8; or for intoxicating liquors, same Act, s. 16; under the Inland Waters Seamen's Act, for sailors unlawfully secreted, R.S.C. c. 75, ss. 42 and 43; under the Canada Temperance Act, R.S.C. c. 106, se. 108, 109; under the Ontario Liquor License Act, R.S.O. c. 245, ss. 130 to 133; under the Animals Contagious Diseases Act, R.S.C. c. 69, a. 35; under Code 514 respecting the unloading of cattle, during a journey for food and rest: Code 515.

Forms of informations and search warrants are given in the schedule to the Criminal Code—Form J of information and Form L of warrant, as amended by the Act of 1900, c. 46.

A justice has no authority to refuse to issue a search warrant upon a proper information being laid, under Coue 569.

Upon receiving an information for any indictable offence, the next duty of a justice is "to hear and consider the allegations of the complainant"; and if of opinion that a case for so doing is made out, he must issue a summons or warrant.

The justice cannot arbitrarily and without reason refuse to issue process. He must hear the complainant's statements and adjudicate upon them, and a mandamus will lie to compel him to do so if he declines: See ante p. 62.

In so adjudicating the justice should have reference to the considerations deal, with in the preceding pages of this book viz., amongst oth :s, whether an offence against the law has been alleged, see p. 185, whether the matter is within his

jurisdiction, see pp. 167, 175, whether the time limited for the prosecution to be commenced has elapsed, see p. 147, also whether there is any cause why he should not set in the particular case by reason of any interest he may himself have in the subject matter, or the parties, see p. 141, and the other matters which have been referred to in Chapter IX. infra: see Code 554, 555, 557, 560 and 561.

If the justice decides to proceed with the case, he must issue a summons or warrant, to bring the accused before him, to answer the charge: see Code 554, 559, 562 and 563.

Summons or Warrant.—The question whether a summons or a warrant to apprehend, the accused, should be issued in the first instance, is a matter for the exercise of the justice's discretion. He will of course be guided upon that point, by the information and the facts alleged, and the nature of the offence, having in view that the object is to secure the presence of the accused. For a trifling offence a warrant should not be issued; but if from the serious nature of it, α the supposed character of the accused, there is any reason to suspect that the prosecution might be defeated by giving the defendant notice by serving him with a summons, a warrant to apprehend ought to be issued: Paley, 6th ed., 97. See infin "Summary Convictions." For a mere money penalty, a summons and not a warrant should be issued in the first instance, unless it appears that the accused will probably abscond: Paley, 89. But upon a serious charge, and generally for an indictable offence, especially of a heinous character, a warrant must always be issued.

If a warrant is issued in the first instance, the proceedings are provided by Code 563. The form is given at the end of the Criminal Code—Form F. All blanks must be filled in before it is issued; and it must be under the hand and seal of the justice; and may be directed to one or all of the constables of the county: Code 563.

If a summons is issued, its form and contents are provided by Code 562—Form E at the end of the Criminal Code. The place at which the accused is called upon to appear should be a convenient place, reasonably near where he resides. But the justice has jurisdiction over the whole county, and so prohibition will not lie even if it is returnable at an inconvenient distance: R. v. Chipman, 1 Can. Cr. Cas. 81.

The defendant ought in no case to be unnecessarily brought, either by summons or warrant, a long distance from his place of residence.

A reasonable time to appear upon a summons must be given: R. v. Smith, L.R. 10 Q.B. 604.

And a summons requiring the defendant to appear immediately or on the same day he is served, is irregular: Paley, 6th ed., 90; and see R. v. Langford, 15 O.R. 52.

The summons must be served by a constable or peace officer: Code 562 (2).

As to who are peace officers see Code 3 (*). It is sufficient if a copy of the summons be delivered and not an original: R. v. Chandler, 14 East, 267.

Service of Summons.—The summons may be served either

- Personally, on the accused, by delivering it to himself:
- 2. Or if he cannot conveniently be found, it may be left for him, at his present place of abode, with some inmate apparently over 16 years old.

It is not necessary to produce positive proof that the person served was an inmate; it is sufficient if the constable swears that the person he served was apparently an inmate: R. v. Chandler, supra.

Some reasonable effort should be made to serve the accused personally; and where the summons was served upon an adult at the defendant's residence, but there was no proof at all that the person served was an inmate, or that any effort had been made to serve the defendant personally, the service was held insufficient, and the conviction was set aside: Re Barron, 33 C.L.J. 297.

3. Or if the accused has ceased to have a known abode, it may be left at his *last*, or *most usual* place of abode, with a like inmate: Code 562 (2).

The constable should state to the person served, what the nature of the summons is, and who it is for: Ex p. Smith, 39 J.P. 614.

Service of a copy of the summons is sufficient, and it is not necessary to serve an original or duplicate: R. v. Chandler, 14 East, 267.

A corporation may be indicted (R. v. Great Northern, 9 Q.B. 315), but cannot be the subject of a preliminary inquiry before a justice for an indictable offence under 28. 635-639 of the Criminal Code. The proceedings against a corporation for an indictable offence must be by indictment, by leave of the Attorney-General or the court: Re Chapman and London, 19 O.R. 33; R. v. The T. Eaton Co., 29 O.R. 591; R. v. Toronto Ry. Co., 30 O.R. 214; R. v. City of London, 21 C.L.T. 71.

Corporations as Defendants.—But a corporation may be tried summarily and convicted before a justice for any unlawful act done by its agents within the scope of their authority; and the summons in such case may be served on the chief officer or secretary of the corporation: R. v. Toronto Ry. Co., supra; Commissioners v. Carlman, L.R. 1 Q.B. 665.

But a corporation cannot be charged with any crime the essence of which is a mens rea (criminal intent, or neglect amounting to wilfulness): R. v. G. W. Laundry Co., (Man. Q.B.), 3 Can. Cr. Cas. 514; see R. v. Union Colliery Co., (S.C.B.C.) 3 Can. Cr. Cas. 523; 21 C.L.T. 120.

As a corporation cannot be committed for trial, nor the prosecutor bound over to prosecute, an indictment can only be preferred against it on the conditions mentioned in Code 641. See further, post "Summary Convictions."

procedure on Default.—If the accused, after due service of the summons, does not attend; or if the constable cannot serve the summons in any of the three ways above indicated, the constable may be sworn as a witness, and his evidence is to be taken down in writing and signed by the constable and justice, shewing that the summons cannot be served, and stating what efforts the constable has made and why he cannot effect service; or an affidavit of the constable may be drawn up and sworn to before a justice, or a commissioner or notary public: Code 562 (3).

An affidavit that the constable served the defendant (naming him) with the written summons by delivering a copy of the same to and leaving the same with the wife of the defendant for him the said (naming him) at their most usual place of abode, was held sufficient service and proof: R. v. McAuley, 14 O.R. 643.

Upon proof of service of the summons, and the accused not appearing, or if the affidavit or evidence of the constable shews that the summon, ecanot be seved, the justice is to issue a warrant to arrest the comsect: Code 563 (4).

Warrant on Default.—And the justice in case of necessity may even without proof of service, or any attempt to serve the summons, issue a warrant of arrest-Form F at the end of the Criminal Code. And a warrant may be issued, either before or after the time mentioned in the summons for the appearance of the accused: Code 563 (4); Form G at the end of the Criminal Code.

Where the charge is for an offence on the high seas, the warrant Form D in the schedule to the Criminal Code, is to be issued. As to these offences see p. 171.

A warrant of arrest is in force until executed, no matter what length of time elapses: Code 563 (3).

The justice cannot proceed with a preliminary inquiry in the absence of the accused, even if he has been served with the summons. He must be brought personally before the

Execution of Warrants .- The arrest may be made by any constable to whom the warrant is directed, whether or not the place in which it is executed is in the constable's county or any other county: Code 564 (2). It may be executed in the justice's county, or in an adjoining county within seven miles of the boundary, without being "backed," in the case of "fresh pursuit": Code 564 (1). As to what is "fresh pursuit" see p. 197. The distance of seven miles mentioned is measured "as the crow flies," or as stated in Mouflet v. Cole, L.R. 8 Ex. 32, "in a straight line on the horizontal plane: " see also R. v. Saffron Waldren, 9 Q.B. 77; R. v. Wood, 5 Jur. 225; Duignan v. Walker, 5 Jur. N.S. 976; Atkyns v. Kinnear, 4 Ex. 776.

Sections 16 and 17 of the Criminal Code justify (that is, protect from criminal or civil proceedings) a ministerial officer, in executing lawful warrants, as well as those lawfully assisting him. A constable is justified in executing a warrant, even if it is invalid, if it was issued by competent authority, and is valid on its face: Code 18; R. v. King, 18 O.R. 566; Sleeth v. Hurlbert, (Can. Sup. Ct.) 3 Can. Cr. Cas. 195, and cases there cited; and he is also protected from criminal but not civil responsibility, in executing a warrant issued by a justice who is acting as such under colour of

right, although so acting erroneously, or without authority in the particular case: Code 19; see also ante p. 135. If a constable, acting in good faith and on reasonable and probable grounds, arrests the wrong person, he is free from criminal responsibility: Code 20; and anyone assisting the officer, and who believes that the person he is assisting to arrest, is the person against whom the warrant was issued; and every gaoler detaining such person is also protected: Code 20 (2). And the same holds good in the case of an arrest made in good faith, if the officer believes the warrant to be valid, although it be invalid on its face: Code 21. These provisions vary, to some extent, the common law rules upon the subject.

A warrant can only be executed by the constable, or one of a class of constables or peace officers, to whom it is

directed: Symonds v. Curtz, 16 Cox, 726.

A constable may execute a warrant on Sunday or any other day: Code 564 (3); and by night or day: 4 Russell on Crimes, 6th ed., 110; and he may break open an outer or inner door, (or both) of the place where the accused is suspected to be. But before breaking in by force, he must make a reasonable demand of admittance and explain who he is and his business there. The breaking of an outer door should only be resorted to in a case of necessity, when an immediate arrest is requisite: 1 Burns' Justice, 276.

Mere words will not suffice to consummate an arrest; the constable must place his hand on the accused, or otherwise restrain his liberty: 1 Burns' Justice, 275.

But this may be waived, and if the accused examines the warrant and agrees to go with the constable, or if he so agrees on being told by the constable that he has a warrant for his arrest, it is complete without any physical restraint: Alderich v. Humphrey, 29 O.R. 427. A constable must have the warrant with him, and produce it if required, on making the arrest: Code 32 (1); R. v. Chapman, 12 Cox, C.C. 4; R. v. Carey, 14 Cox, C.C. 314.

And he must also give notice, when practicable, of the warrant and cause of arrest: Code 32 (2). For this purpose the justice is to furnish the constable with a copy of the warrant, for service on the accused: Code 843. But this requirement is only directory, being merely a matter of procedure, and the omission of service of a copy of the warrant will not invalidate the arrest: Exp. Lutz, 27 N.S.R. 491. But such omission will be a factor in considering the question of the amount of force which was necessary in effecting the arrest, if it is resisted: Code 32 (3).

"Backing" Warrants.—If the accused cannot be found in the county in which the warrant was issued, the constable may go before a justice in any other county or district in Canada, where the accused is suspected to be, and have the warrant "backed" or endorsed as follows: Code 565. The constable is to be sworn by the justice as a witness, in the usual way, and his evidence will be taken shewing that he was present and saw the warrant signed by the justice who issued it. Upon receiving such evidence a justice in another county may make an endorsement upon the warrant in Form H, given in schedule 1 to the Criminal Code.

ENDORSEMENT ON WARRANT.

Canada.
Province of
County of

Whereas proof upon oath has this day been made before me, E.F., a Justice of the Peace in and for the county of , that the name Justice of the Peace within mentioned; I do therefore hereby authorize G.H., who brings to me this warrant, and all other persons to whom this warrant was originally carected, or by whom it may be lawfully executed, and also all peace officers of the said county of to execute the same within the said last mentioned county.

Given under my hand this day of at the of in the county of

, in the year 19 , aforesaid.
Justice of the Peace,

Backing the warrant is a purely ministerial act, and the justice cannot exercise any discretion in the matter, but must back the warrant if oath or affirmation is duly made to the handwriting of the justice who granted it: R. v. Gynaston, 1 East, 117; Clark v. Woods, 2 Ex. 395.

The warrant so "backed" may then be executed by the constable who brought it, or by any other constable, either of the county where the summons was issued, or of that where it was so endorsed: Code 565. The same process may be repeated in other counties in any part of Canada where the accused is supposed to be: Code 565. An arrest made, in another county than that in which it was issued, before the warrant

is "backed" is unlawful, even if the warrant is afterwards duly endorsed: Southwick v. Hare, 24 O.R. 528. The endorsement must shew on its face that the justice's signature was proved: Reid v. Maybee, 31 C.P. 348.

Upon effecting an arrest under a warrant, either in the county of the justice who issued it, or elsewhere, it is the duty of the constable, as soon as practicable, to bring the accused before the justice who issued the warrant, or some other justice of the same county: Code 565; whether in the province where the arrest took place, or anywhere else in Canada: R. v. Gillespie, 1 Can. Cr. Cas. 551.

But if the prosecutor or some of his witnesses are in the county where the arrest took place, and if the justice who backed the warrant directs that the accused be brought before himself, or some other justice for the same county, and if the arrest and the offence both took place in the same province, but not otherwise, the justice is authorized to make such direction, and it will be the duty of the constable to comply with it; and the justice who backed the warrant, or any other justice for the same county, may then proceed with the case, as if the warrant had originally been issued by himself: Code 566.

In any case in which a prisoner is brought before a justice for an offence alleged to have been committed in another county, such justice may, after hearing both parties, and at any stage of the proceedings, either before or after he has proceeded to hear the case, direct that the accused be taken before a justice for the county where the offence was committed: Code 557; and a warrant, Form A. to the Cr. Code, will then be issued. Upon such warrant, with the prisoner, and any depositions and papers being taken before the last mentioned justice, and upon proof of the handwriting of the justice who issued the warrant, the justice before whom the accused is taken is to give the constable a receipt, Form D. to the Cr. Code, and the latter justice is to proceed with the case: Code 557 (2).

A justice is not obliged under this section to send the accused before the justice of the county where the offence was committed. Under Code 640, any Criminal Court in Canada is competent to try (and so a justice may proceed with a preliminary inquiry upon) any offence committed anywhere in the same province, if the accused is found or

is apprehended, or is in custody within the territorial jurisdiction of such court: R. v. Burk, per Falconbridge, C.J., 7th July, 1900.

A warrant of arrest must not be issued in blank: Code 563; the name of the person arrested, or, if his name is unknown, a description by which he may be identified, must be inserted in the warrant. As to the requisites of a warrant see the provisions in Code 563.

Arrests Without a Warrant.—An arrest may sometimes be made without a warrant having been obtained from a justice of the peace. In certain cases such arrests may be made by any private individual, while in others it can only be made by a constable or peace officer.

1. Arresis by Private Individuals.

(a) Any person may, without a warrant, arrest another who is "found committing" any of the offences enumerated in the different sub-sections of Code 552, as amended by the Dom. Stat., 1895, 59 Vict., c. 40.

It is not necessary that the person making the arrest should himself have found the person arrested actually committing the offence. The words are "anyone found committing": Code 552; so, if the accused has been seen committing the act, by any person, and is immediately and continuously pursued, any number of persons may join in the pursuit, and any of them may capture and detain the offender. In such case, having been found red-handed, he may be followed and captured on a "fresh pursuit" by any of his pursuers. "Fresh pursuit" means immediate pursuit from the time of the commission, or attempted or alleged commission of the offence, and continuously until the capture.

When a constable, being assaulted in performing his duty, went for help, and returned in an hour and arrested the accused, it was held not to be a case of arrest on fresh pursuit: R. v. Marsden, L.R. 1 C.C. 131.

Pursuit after a delay of two hours is not freely pursuit: Downing v. Capel, L.R. 2 C.P. 461: Leete v. Hart, 37 L.J.C.P. 157.

A person was seen in the act, and the parties who saw him went at once for a constable, who followed and arrested the culprit a mile distan'. It was held a case of arrest on fresh pursuit: Hanway v. Boultbee, 1 Mood. & Rob. 15. A servant saw the deceased commit an offence, and immediately called his master, who came in a quarter cf an hour and pursued and captured the offender who had gone away; held a case of arrest on fresh pursuit: R. v. Howarth, 1 Mood. C.C. 207.

- (b) Code 552 (4) authorizes anyone to arrest, without a warrant, a persor whom he believes to have committed any offence, and to be escaping, and freshly pursued by those whom he reasonably believes to have authority to arrest the defendant.
- (c) By Code 24 any person is justified (i.e., freed from any civil or criminal liability, and therefore authorized, as well as justified: R. v. Cloutier, 2 Can. Cr. Cas. 43) in arresting without a warrant anyone he finds committing at any time any offence for which the offender may be arrested without a warrant, or for which he may be arrested when "found committing" it. That is to say, a private person may arrest anyone he finds committing any of the offences mentioned in the sub-sections of Code 552, as amended by the Act of 1895. And even if he did not himself find the accused committing the offence, yet if any of the offences just referred to has in fact been committed, anyone may arrest a person whom he believes, on reasonable grounds, to have been the perpetrator, whether such person turns out to be the guilty one or not: Code 25. A private individual cannot arrest on suspicion, or belief that an offence has been committed, even if he has reasonable and probable grounds for such suspicion or belief. He must shew that an offence was actually committed by some person, and then he will be justified, although the person arrested turns out not to be the one who committed it: Ashley v. Dundas, 5 O.S. 749; McKenzie v. Gibson, 8 U.C.R. 100.

(d) By Code 552 (s.-s. 3), amended by the Act of 1895, any person may arrest, without a warrant, any one he finds committing any criminal offence whatever by night, (9 p.m. to 6 a.m.: Code 3 (g)). The same provision is also made in Code 28.

- (e) By Code 23 everyone is justified in assisting a peace officer in making any arrest which the latter may lawfully make.
- (f) And by Code 38 everyone who witnesses a breach of the peace may detain, for the purpose of handing over to a

peace officer, anyone committing or about to commit, join in, or renew the same. And the person arrested is to be taken before a peace officer, who need not be the nearest justice: Forester v. Clark, 3 U.C.R. 151.

2. Arrests by Peace Officers Without a Warrant.

The term "peace officer" is defined by Code 3 (f), and includes a justice or a constable.

By Code 552 (2), amended by the Act of 1895, a peace officer may arrest, without a warrant, in any of the cases above mentioned, and he may likewise arrest;

(a) Anyone who "has committed," or is "found committing" any of the offences enumerated in the amended s.-ss. of Code 552. That is, he may arrest either on view of the offence by himself, or on being immediately informed of the culprit having "been found" committing such offence, if he immediately and continuously pursues and captures him, thus taking him on "fresh pursuit."

(b) By Code 22 he is justified in arresting any person whom he believes, on reasonable and probable grounds, to have committed an offence for which the offender may lawfully be arrested without a warrant; that is, any of the offences in Code 552 as amended.

He may arrest on reasonable suspicion, even if it turns out that the person was innocent; and even if no offence has been committed at all by anyone. Under this section of the Code a peace officer is justified in arresting "on view;" or he may arrest on reasonable suspicion, even if no offence has actually been committed. Sec. 22 was held to authorize a constable to arrest, in Manitoba, a person who was alleged by telegram from a credible source in Quebec, to have committed one of the offences mentioned in Code 552, and to detain him for a reasonable time, although the offence was committed in Quebec: Re Cloutier, 2 Can. Cr. Cas. 43.

(c) A peace officer may also arrest anyone he finds committing any criminal offence at any time: Code 27; amended Code 552 (3) in the Act of 1895.

The provision in Code 552 (2) is limited to the offences mentioned in that section and its sub-sections, while the cases provided for by Code 552 (3) are any criminal offences whatever. In the former, a peace officer may arrest if the party has actually committed one of the offences mentioned

in Code 552, or if there is any reasonable ground for believing he has done so; or if the offender has been found by anyone in the act, and is captured on fresh pursuit; while in the cases under 552 (3), the officer is authorized to make the arrest if he himself finds the offender committing any offence.

(d) Code 552 (7) and 28 (2) authorize an arrest by a peace officer of anyone loitering about during the night, and whom he has cause to suspect of having committed, or being about to commit, any indictable offence. The person so arrested must be taken before a justice before noon of the "following day;" probably meaning noon of the "following day-time" after the preceding "night" of the arrest (9 p.m. to 6 a.m.: Code 3 (2)).

(e) Code 39 authorizes a peace officer to arrest anyone whom he finds committing a breach of the peace at any time

by night or day.

The above sections of the Criminal Code relating to arrests without a warrant are a codification and extension of a part of the provisions of the common law, which are not abrogated, but are still in force, except where changed or replaced by these sections.

For a statement of the common law rules respecting the authority to arrest without a justice's warrant: see Still v. Walls, 7 East, 536; King v. Poe, 15 L.T. 37; Roscoe's Cr. Ev. p. 262; 1 Burns' Justice, 28th ed., 270; see also the judgment of Osler, J.A., McGuiness v. Dafoe, 23 A.R. 704.

A peace officer may arrest without a warrant a convict who is out on license, under the circumstances mentioned in s. 8 of Dom. Stat., 62-63 Vict. c. 49.

Effect of Arrest Without Warrant.—When a person has been arrested without a warrant and brought before a justice, no information is necessary: Code 577; the accused being before a justice having jurisdiction over the subject matter, the justice may proceed with any charge whatever which is then made against the prisoner, and all further proceedings are valid, even if the arrest was unauthorized and invalid: McGuiness v. Dafoe, supra; Grey v. Commissioners of Customs, 48 J.P. 343.

Duty of Constable After Arrest.—The constable having made the arrest has the right to place the prisoner in any lock-up, police cell or goal, until he can bring him before a

justice. A constable must bring the person are sted before a justice within a reasonable time: Code 367. There is no definite time prescribed, exc pt in the case of an arrest without a warrant under ss. 28 (2) and 552 (7); and except in case of an arrest by a private individual, when the prisoner must be at once handed over to a peace officer (justice or constable): see Code 38.

The Pawnbrokers' Act, R.S.C. c. 174, ss. 9-10, authorizes a pawnbroker or his servants, to whom goods are offered to be pawned, or to be redeemed from pawn, under any of the circumstances stated in these sections, to seize and detain the person and the goods, and convey them into the custody of a peace officer or constable, who is to take such person before a justice as soon as possible.

Coroner's Warrant.— In addition to other modes of bringing a person accused of an offence before a justice, by summons or warrant above indicated, there is the case of a person found upon a coroner's inquiry to be responsible for the death of a human being, and chargeable with the crime of murder or manslaughter. In such case the coroner has now no authority to commit such person for trial, but he is, by warrant under his hand, to cause the accused person to be arrested and taken before a justice for preliminary hearing; or the coroner may take bail for the appearance of the accused before a justice, for such hearing: Code 642. The following is a form of such warrant:—

Canada,
Province of County of
To wit.

To all or any of the constables and other peace officers in the said county of

Whereas A.B. of the of in the county of (occupation) has this day, upon an inquisition taken before the undersigned, a Coroner in and for the said county of been charged with the manslaughter (or murder) of C.D. (or a man or a woman, or a male or female child unknown) of the of in the county of . And whereas the said A.B. has not already been charged with the said offence before a Magistrate or Justice. These are therefore to command you in His Majesty's name forthwith to take the said A.B. into custody and convey him (or her) with all convenient speed before a Magistrate or Justice in and for the said of to answer unto the said charge and to be further dealt with according to law.

Given under my hand and seal this day of , A.D. 19 , at the of in the county aforesaid.

[Seal.]

G. H., Coroner, County of The coroner is to transmit the depositions which have been taken before him, and all papers in the case, to the justice, who will proceed as if the accused had been arrested on the justice's warrant: Code 568.

Force.—An officer lawfully executing any warrant or process, or making any arrest, and everyone lawfully assisting him, is justified, or protected from criminal responsibility in using such force as may be necessary to overcome any force used in resisting such execution or arrest, unless the process or warrant can be executed or the arrest effected by reasonable means in a less violent manner: Code 31.

Where his authority to arrest is resisted the officer may repel force by force, and will be justified, even if death should be the consequence: yet he will be responsible if he comes to extremities without necessity. 3 Russ., 6th ed. 130; Arch., 22nd ed. 778. And so an officer, or anyone assisting him, is likewise justified, if the person takes to flight to avoid arrest, in using such force as may be necessary to prevent an escape by such flight, unless such escape can be prevented by reasonable means in a less violent manner: Code 33.

Where a person guilty of a serious offence, such as would formerly constitute a felony, flies from justice and is killed by the officer in pursuit, the homicide is justifiable if the offender could not be otherwise overtaken; but not if the offence was one which would have been formerly classified as a misdemeanor: 3 Russ., 130; Arch., 779.

The provisions of Code 33 also apply to cases when the arrest may lawfully be made without a warrant, by a private person, as to which, see ante: Provided that such force is neither intended, nor likely, to cause death or grievous bodily harm: Code 34; and Code 35 also extends the provisions of Code 33, so as to include other persons than peace officers, provided that the necessary force which may be used is neither intended, nor likely, to cause grievous bodily harm.

Everyone who has lawfully arrested a person for any offence for which he may be arrested without a warrant, is protected from criminal responsibility in using such force to prevent his rescue or escape, as the person making the arrest believes, upon reasonable grounds, to be necessary for that purpose: Code 36; and the same provisions are made applicable, by Code 37, to cases of arrest under a warrant for an offence other than that for which the offender may be arrested

without a warrant: provided the force used to prevent the rescue or escape is neither intended, nor likely, to cause grievous bodily harm.

Everyone making an arrest, with or without a warrant, must give notice of the process or warrant under which he is making the arrest, or of the cause of the arrest; and if arresting under a warrant, must have it with him and produce it if demanded. But the failure to do so is no justification for resistance by the person being arrested, nor does it invalidate the arrest, but will be a factor in any question which may arise as to whether the arrest might have been made in a less violent manner: Code 32.

Treatment of Prisoner on Arrest.-Upon effecting an arrest for an indictable or other serious charge, the constable should, as a general rule, search the person of the prisoner, and take from him any weapons and anything which it might be unsafe to leave with him, and anything which possibly may be in any way connected with the offence charged. But the prisoner's money or any other property (unless it may possibly be connected with the offence) ought not to be unneces sarily taken away from him. It may be very important to him to have the means of carrying on his defence: R. v. O'Donnell, 7 C. & P. 138; R. v. Kinsey, 7 C. & P. 447; R. v. Jones, 6 C. & P. 343; R. v. Burgess, 7 C. & P. 488; Dillon v. O'Brien, L.R. 20 Ir. 300. See also R. v. Boulton, 12 Cox, C.C. 95; Agnew v. Jobson, 13 Cox, C.C. 625; Gordon v. Denison, 24 O.R. 576, 586, 605; 22 A.R. 315, 325; R. v. Bass, 2 C. & K. 822.

It would be a trespass for a constable to search a person arrested on a trivial charge: Bessell v. Wilson, 17 J.P. 52; and there is no authority to search a witness arrested for non-attendance on a summons: Gordon v. Denison, supra.

If a constable improperly deprives a prisoner of his property, an application may be made to the justice for its restoration, which on hearing all the parties concerned, he should order, if it impears just. If the property is clearly not the produce or evidence of the crime to be investigated, or of any other crime, and is not such as it is unlawful for the prisoner to have upon his person on the public streets, if he is arrested there; and is not of such a nature that it will be unsafe to allow him to retain it, it ought to be restored: R. v. Barnett, 3 C. & P. 600; R. v. Frost, 9 C. & P. 129.

Handoufing.—A prisoner arrested for a trifling offence should not be handcuffed, especially if he is a known resident in the community. And no one should be handcuffed, unless from the nature of the offence, and the supposed character of the prisoner, or for violent resistance to arrest or attempt to escape, or for some other sufficient reason, the constable has reasonable apprehension that the prisoner would otherwise escape, or that there is danger that he might do so. Except on such grounds, there is no justification for handcuffing a prisoner. There must be some reason for that degree of violence and restraint: Wright v. Court, 4 B. & C. 596; Griffin v. Coleman, 4 H. & N. 265; Hamilton v. Massie, 18 O.R. 585; Addison on Torts, 660; R. v. Taylor, 59 J.P. 393.

The accused should be treated in a manner consistent with his possible innocence; having careful regard, however, to what is necessary for his safe custody, and the elucidation of the charge against him. Unnecessarily hustling and haling any prisoner, and especially a possibly innocent man, along the public streets, as well as other unnecessarily harsh treatment, is a trespass and an assault. The law bearing upon the subject of the treatment of a prisoner, is fully discussed in the following authorities: Leigh v. Cole, 6 Cox, C.C. 329; R. v. O'Donnell, 7 C. & P. 138; R. v. Kinsey, 7 C. & P. 447; Gordon v. Denison, 22 A.R. p. 326; Russell on Crimes, vol. 3 (6th ed.) 329.

Except in the case of an arrest elsewhere than in the county in which the warrant was issued, and of the accused being taken before a justice where such arrest is made (Code 566), the constable must take the prisoner before the justice who issued the warrant, or some other justice of the same county: Code 567.

Proceedings before Justices on the Arrest.—Upon a person accused of an indictable offence being brought before a justice under arrest, whether with or without warrant, or if he appears upon summons, or even if he appears voluntarily, the justice is to proceed with the hearing in the manner provided by Code 577, et seq.

If the accused appears to be not more than sixteen years old, special provisions are made for the manner in which the case is to be proceeded with, as described in the chapter on "Juvenile Offenders," infra.

The information being merely to guide and give authority to the justice in issuing a summons or warrant, ceases upon the accused being brought, or appearing before him, to be of any importance. The information and process have then no further bearing upon the case; so that any irregularity or defect of substance or form, in the information, summons or warrant, or any variance between the summons or warrant and the charge laid in the information, or the evidence adduced, or even the entire absence of any information or process, or if the accused has been illegally arrested without a warrant, will not affect the subsequent proceedings: Code 578; R. v. Hughes, 4 Q.B.D. 614; Re Maltby, 7 Q.B.D. 18; MacGuiness v. Dafoe, 23 A.R. 704; and the justice may proceed, without amending the information (if any), to hear any charge whatever, of an indictable offence within the justice's jurisdiction, which may be brought against the accused, whether it is the charge mentioned in the information or any other charge, and even upon wholly different facts; Code 577; R. v. Brown (1895), 1 Q.B. 119; Grey v. Commissioners of Customs, 48 J.P. 343,

The accused must be informed, however, of the nature of the charge which is to be proceeded with: and if this differs from that laid against him in the information and process, and he has been mis-led, or taken by surprise, or in any way prejudiced; or if the charge as proved is different from that stated in the information or process, and the accused desires further time, an adjournment must be granted, the accused being remanded to gaol, or bail being taken, according to the nature of the case: Code 579: Re Daisey Hopkins, 56 J.P. 263; R. v. Vrooman, 3 Man. R. 509: R. v. Bowman, 2 Can. Cr. Cas. p. 93.

Further particulars may also be ordered to be furnished at the request of the accused: R. v. France, 1 Can. Cr. Cas. 321.

But on an information for an indictable offence, the justice cannot convict the accused summarily of an offence within the justice's summary jurisdiction, even if the evidence proves it. The new charge must be formulated, and the accused must be distinctly informed of it and called upon to plead to it, and the evidence must be taken again, the regular proceedings being taken for a case of summary conviction: R. v. Mines, 1 Can. Cr. Cas. 217; Re Doherty, 1 Can. Cr. Cas. 84; Miller v. Lea, 2 Can. Cr. Cas. 282.

Remands.—Upon a preliminary inquiry the justice may adjourn the hearing, from time to time, as the necessity of the case requires: Code 585(c); and the justice must either issue a warrant remanding the accused to gaol: Form P. to the Criminal Code; or he may take bail in a bailable case: Form Q. to the Criminal Code; see Code 579, 586(c), 587.

Ball.—But in a case of murder or manslaughter, or any of the offences mentioned in Code 603, bail cannot be taken. For a trifling or minor offence the justice may allow the accused to go at large on his own recognizance: Code 567, 587 (a); (Form Q. to the Criminal Code); or he may verbally remand him for not more than three clear days to the custody of the constable, and in that event the constable may place the accused in some fit and secure place (not in gaol) to be selected by the constable: Code 586 (c).

If bail is taken, it should be sufficient, but must not be excessive; and the sureties may be examined on oath or affirmation, in the usual manner, touching their property and sufficiency; and their evidence will be taken down in writing by the justice and signed by the sureties and justice in the usual manner of taking evidence.

Remands in Cases of Indictable Offences.—No remand or adjournment in cases of indictable offences, can be made for more than eight clear days, the day next after the adjournment to be counted as the first day; Code 586 (c). The term "clear days," means that the time is to be reckoned exclusive of both the first and the last days: Re Sams and City of Toronto, 9 U.C.R. 181; R. v. Aberdare, 14 Q.B. 854.

Sunday is to be counted as one of the eight days: Re Railway Sleepers Supply Co., 29 Ch. D. 204.

A remand on the first day of the month for eight clear days would mean that the prisoner is to be brought up again on the tenth day of the month. But any number of adjournments may be made if the interests of justice so require: Code 586 (c); but there should be good ground shewn for them: Connors v. Darling, 23 U.C.R. 547. Applications for remands by the crown officer in serious cases should generally be granted.

But some evidence should be offered within a reasonable time shewing facts justifying the prosecution: see further as to remands at p. 235, post. The justice is not responsible for

the prisoner's treatment by a constable on his remand: Crawford v. Beattie, 39 U.C.R. 13.

The accused after being remanded until a stated day, may be brought before the justice and the case may be proceeded with on an earlier day, if it is found expedient: and the gaoler must produce the accused on the justice's order: Code 588.

FORM OF ORDER.

To , keeper of the common gaol at , in the County of You are hereby required to have now in your custody at the Police Court Room in the of on the day of , A.D. 19 at o'clock noon, before me or such other justice as shall then be there to answer to a charge of (set out the charge) upon which he was heretofore remanded by me to your custody, to be dealt with according to law.

Justice of the Peace in and for the County of

Failure to Attend on Remand and Bail.-If the accused is out on bail, and does not appear at the time and place fixed for the hearing, a new warrant is to be issued: (Form F. to the Cr. Code), which may be executed in the same manner as the warrant issued in the first instance, as to which, see p. 193. Proceedings to have the bail estreated may also be taken by any justice who was present at the time and place at which the accused was bailed, and who was present at the time and place fixed for the hearing. The justice is to endorse on the recognizance a certificate: Form R. to the Cr. Code, and the recognizance is to be transmitted, in Ontario, to the clerk of the peace who will apply at the General Sessions to estreat the bail: Code 589, amended by the statute of 1900, c. 46. amended Code 589, in the Act of 1900, however, provides that in British Columbia the recognizance is to be sent to the clerk of the County Court, and in the other provinces to the officer to whom recognizances were accustomed to be sent before the passing of the Cr. Code Amendment Act, 1900,

The effect of the amendment is to adopt the practice under the summary conviction clauses: see Code 878, as amended by statute of 1895.

The application to estreat the recognizance must be made at the next sittings of the General Sessions, and may be enforced in the same way as fines imposed in that court: see amended s. 589, the Act of 1900, c. 46. If not estreated at the next sittings of the General Sessions, there would appear to be no authority to do so at any subsequent sitting.

Procedure to Procure Attendance of Witnesses, etc.

Summons to Witnesses.—The justice, upon the application of either party, in a preliminary enquiry (Code 580), may issue a summons for any material witness: Form K. to the Code; see amended Form K. in the Statute of 1895, c. 40.

The word "may" in this section implies a duty, and means "must," if upon the facts stated it appears that the witness is likely to give material evidence. It is a matter for the exercise of judicial discretion, on good reasons, and the summons cannot be refused arbitrarily.

But if the witness is clearly not material, or it is proposed to summon an unnecessary number of witnesses upon any point, the justice ought to use a proper discretion in considering whether any witness should unnecessarily be put to the expense of attending, at his own cost, which he would be bound to do, there being no power to allow witness fees: R. v. James, 1 C. & P. 322.

The summons for a witness must be issued by the justice before whom the information was laid; another justice has no authority to do so: Bryne v. Arnold, 24 N.B.R. 161.

It is not necessary that the materiality of the witness should be made to appear on oath: see amended form of summons in the Act of 1895, c. 40.

A summons for a witness must not be refused unless there is a very clear case for doing so, on the ground that his evidence would not be material or necessary.

The summons may contain a direction to the witness to produce any documents in his possession; or under his control or power even if not in his possession: Code 580; and the following form of words may be inserted, "and that you, "the said (name of witness), bring with you and produce "at the said time and place all books, papers, writings and "documents in your possession or power relating to the said "matter, and particularly" (here mention any specific book or paper or other thing it is desired to have produced).

Serving Witnesses.—The summons must be served by a constable or peace officer: Code 581.

It may be served: (1) Personally; (2) Or if the witness cannot conveniently be met with, it may be left at his last or most usual place of abode for him, with an inmate apparently not under sixteen years old: Code 581.

In the latter event, the constable should explain the nature of the summons: see R. v. Smith, L.R. 10 Q.B. 604.

The "most usual place of abode" means his present place of abode; and the words "last place of abode" means the last he had, if he has ceased to have any: Ex p. Rice Jones, 1 L.M. & P. 357.

Some reasonable effort should be made to serve the witness personally; and before any warrant to arrest a witness for non-attendance is issued, it should be shewn that the summons has come to the witness's knowledge: Gordon v. Denison, supra.

Warrants against Witnesses.—If the witness does not attend, and no sufficient excuse is given, the justice may swear the constable as a witness and take his evidence as to the service of the summons on the witness; and the facts will be taken down in the same manner as any other evidence.

The constable's evidence should shew that the summons was served personally, or if not personally, what efforts the constable made to find the witness, that he could not find him, and that an inmate (of at least sixteen years of age) of his house was served there, and also such other facts and circumstances as go to shew that the witness is avoiding service; or that the summons has come to the witness's knowledge. Evidence of the constable, or some one else cognizant of the facts, should be taken shewing that there is reason to believe the witness is likely to give material evidence.

The evidence so taken will be under the usual heading: Form S to the Criminal Code; and will be signed by the constable and any other witness, and by the justice. It should appear that the summons was served a reasonable time before the witness is required to appear: Re Williams, 21 LJ.M.C. 46; Ex p. Hopwood, 15 Q.B. 121.

The justice may then issue his warrant; Form L, schedule 1, to the Criminal Code; for the arrest of the witness, who will be accordingly arrested and brought before the justice, to give evidence at the time and place to which the case may be adjourned: Code 582.

The warrant may be executed by a constable, anywhere in the county; or if the witness is not in the county, he may execute it in any other county in the *Province*; but not out of the Province: Code 582 (2), upon getting the warrant "backed" in the same manner as a warrant for the arrest of a person charged with crime may be endorsed under Code 565, as to which see p. 195: Code 282 (2).

Treatment of Witness when Arrested.—The constable is to take the witness so arrested immediately before the justice who issued the warrant, or some other justice for the same territorial division who shall be then there, who may order his detention by the constable before such justice, or in the common gaol, or other place of confinement, or in the custod. If the constable; or the justice may order his release on his own recognizance, or with sureties, in order to secure his presence as a witness at the time and place fixed for the trial: Code 582 (3). The witness must not be searched nor placed by the constable in the police cells.

The proper course of proceeding in dealing with a witness who does not attend on a summons, and the principles and rules as to what justifies the issuing of a warrant to arrest against such witness, and also as to the treatment of the witness upon his arrest, are fully laid down in the case of Gordon v. Denison, 22 A.R. 315, and the justice, as well as the constable, before acting in such a matter should carefully examine and follow the rules laid down in that decision.

The witness is not to be treated as a criminal, and the one thing to be kept in view is to secure his attendance to give evidence at the time and place appointed; and no harshness, or unnecessary interference with the witness's rights or liberty should be allowed.

Proceedings Against Witness for Contempt.—Upon the witness's arrest, the justice may also proceed summarily to enquire into the charge of contempt against the witness, and, if he is found guilty, the justice may fine him not more than \$20.00, or impose imprisonment in gaol, without hard labour, not exceeding one month, or both fine and imprisonment: and may also order the witness to pay the costs incident to the service and execution of the summons and warrant, and of his detention in custody: Code 582 (3).

If the witness is to be proceeded against for contempt, he should be informed of it, and evidence, both against him and

on his behalf, should be heard in his presence; and he should be given the privilege of counsel to examine witnesses and address the court, and the proceedings up to and including the adjudication and conviction, and the warrants and commitment, will be the same as those provided against a person being tried on an offence under the summary convictions clauses of the Code, section 842 et seq, as to which see p. 204 et seq.

In proceeding against a witness for contempt for non-attendance on a summons, evidence must be taken shewing whether such non-attendance was wilful and intentional, or was unavoidable, or under ignorance or mistake, and the witness himself, and his witnesses, on these points must be heard. An appeal will lie from a conviction for contempt.

For forms see those to the Cr. Code, viz.: Form S. of heading of evidence: Form P.P. of conviction for contempt; Forms F.F.F., G.G.G., J.J.J. or L.L.L. of warrants of commitments, may be adapted with necessary changes.

Proceedings against a witness must be cautiously taken, and should only be resorted to in case of wilful disobedience or defiance, or in case it appears probable from all the circumstances that the ends of justice will be defeated, unless the liberty of the witness is restrained; and the evidence must be such as will satisfy the mind of the justice conclusively on these points. The above provisions for arresting a witness do not apply to permit the arrest of a prosecutor in case of a minor offence which he does not wish to proceed with: Cross v. Wilcox, 39 U.C.R. 187.

Warrant Against Witness in First Instance.—Provision is made by Code 583 for issuing a warrant to a constable to arrest a witness in the first instance and bring him to give evidence. This warrant may be issued upon evidence being taken in the usual way, in writing and on oath or affirmation, by one or more witnesses, shewing facts and circumstances sufficient to satisfy the justice that the witness to be arrested, is likely to give material evidence and will not attend if summoned, or without being compelled by a warrant to do so. This extreme course should not be resorted to, unless from the facts and circumstances, it clearly appears to be necessary.

The character of the witness and his connection, if any, with the parties accused, the nature of the offence, and all the circumstances are to be carefully considered; and the authority given to arrest a person who is a mere witness and

not charged with crime, or strongly suspected of connection with it, is to be used with caution. But where it appears that owing to a witness being mixed up in the affair, or not having any permanent residence, or from the character of the witness, or other sufficient reason, the ends of justice would be otherwise defeated, and particularly where some serious crime has been committed, whatever means are necessary to prevent the loss of important testimony, must be taken.

A witness may only be arrested under Code 583, just referred to, when he is within the province. The form of warrant is given in Schedule 1 to the Cr. Code, Form M., and the warrant must be "backed" in the usual way: (see p. 195) if it is to be executed out of the justice's county. The warrant to arrest a witness in the first instance may be issued at the request either of the prosecution or of the accused: Code 583.

In furtherance of the object to secure the attendance of a witness at the hearing, provision is further made by Code 598 (6) for the arrest of a witness who had been bound on recognizance to appear before a justice, or any criminal court, to give evidence, and who is about to abscond, or who has absconded.

In such a case any justice may take an information, in writing and on oath, and evidence should be taken to shew that the ends of justice will probably be defeated if the witness is not arrested.

In the case of a witness resident in Canada, but who is not in the province, a justice's summons will be of no effect; and a subpena from a Superior Court, or a County Court, must be issued. The subpena will be issued upon an order of a judge of such court, on the application of either party (prosecution or accused) or the Attorney-General. The application must be supported by an affidavit, shewing that the witness is likely to give material evidence, and is a resident in Canada, but out of the province; and the subpena may require the witness to produce documents: Code 584.

The following forms of affidavit and order may be used:-

AFFIDAVIT FOR SUBPCINA TO WITKIRS OUT OF THE PROVINCE. (Code 584).

In the High Court of Justice, or

In the County Court of the County of

In the matter of an information laid by A.B. against C.D. before E.F., Esquire, a Justice of the Peace in and for the County of that (state offence as charged).

I, A.B., of, etc., make oath and say:

1. I am the above named informant, A.B.

2. That on the day of day of A.D. 19, I duly laid an which information is now shewn to me, marked Exhibit "A."

3. That the said Justice of the Peace thereupon issued his warrant for the apprehension of the said C.D., who has been arrested and is . ow in custody (or on bail, or as the case may be) upon the said charge, and the said Justice has appointed the said Justice has appointed the day of , A.D. 19, for the holding of the preliminary inquiry upon the same, and the prosecution of the said C.D. upon the said charge is now pending before the said

4. That one, G.H., is, as I am informed and believe, likely to give material evidence for the prosecution respecting the said charge, the nature of such evidence being, as I am informed and believe, that (state in general terms the nature of the evidence so as to satisfy the Judge or Court that the proposed witness is likely to give material evidence).

5. I am informed and believe that the said G.H. has in his possession or control certain documents relating to the matter in question, namely,

(state what documents are desired to be produced).

6. That the said G.H. resides at , in the Province of Quebec, within the Dominion of Canada, and is out of the Province of Ontario, and I desire that a subpæna should issue requiring the said G.H. to ar pear before the said Justice, at the said time and place, to give evidence respecting the said charge, and to bring with him any documents in his possession or control relating thereto, and particularly the documents above mentioned.

Sworn, etc.

ORDER FOR SUBPRING TO WITNESS OUT OF THE PROVINCE. (Cobe 584).

In the High Court of Justice.

The Honourable

Mr. Justice In Chambers.

In the County Court, etc.

His Honour day the Judge of the said Court day of In Chambers. J A.D. 19

In the matter of, etc. (as in above affidavit).

Upon the application of A.B., the informant above named, and it appearing that one, G.H., residing at the of Province of Quebec, out of this Province, and not being in this Province, is likely to give material evidence for the prosecution in the above matter now pending before the said Justice, and that he is alleged to

have in his possession or control certain documents relating to the said charge, and particularly (state what documents it is desired to have produced).

It is ordered that a Writ of Subpoena, be issued under the Seal of this Court, requiring the said G.H o appear before the said Justice at in the of , in the County of , on the of , and to bring with him, and produce at the said time and place, any documents in his possession, or under his control, relating thereto, and particularly the documents hereinbefore specially mentioned.

The subprena must be served on the witness personally, and an affidavit, sworn before any justice of the peace, is sufficient proof of service: Code 584 (2).

The following form of affidavit of service may be used:-

Application of Service of Subposite out of the Province. (Code 584).

In the High Court of Justice (or as the case may be).

In the matter of, etc.

I of the of , in the County of

(occupation), make oath and say, as follows:

1. That I did, on the day of , A.D. 19 , personally serve with the subpœna hereto annexed, marked A., by delivering to and leaving with him, the said , a true copy of the said subpœna, at the of aforesaid.

2. That at the time of effecting such service as aforesaid, I produced and shewed to the said the said original subpœna hereto annexed, and that the said so served by me is the person named in the said original subpœna.

3. That in order to effect such service I necessarily travelled

4. (If witness's fees are paid add a clause to that effect.)

Sworn before me at the of in the County of this day of A.D. 19 . C.D.

A Justice of the Peace in and for the County of

If the witness does not attend on the subporna, and no just excuse is offered for his non-attendance, the justice upon proof on oath of the service, (that is, on the filing of the above affidavit, which by Code 584 (2) is declared to be sufficient proof) may issue a warrant signed by the justice holding the enquiry, for the arrest of the witness anywhere in Canada, and to bring him before such justice, or any other justice, at a time and place to be mentioned in the warrant, to give evidence: Code 584 (3); see warrant, Form N. to the Criminal Code.

The warrant is not to be directed to a constable of the justice's county, but to any or all constables or peace officers in the county or place where the witness is: Code 584(3); and it may be executed there without being "backed;" but the warrant may be "backed" in the manner directed by Code 565 (see p. 195) in any other county and be executed there: Code 584(4.)

There is no provision made for the payment of the witness's travelling expenses under s. 584, nor under ss. 581 and 582 of the Code; and a witness is bound to attend in criminal cases without being paid his expenses: R. v. James, 1 C. & P. 322.

But as a warrant is not to be issued, in either case, if a "just excuse" is offered; it appears that the absence of payment of necessary expenses, especially if the witness has to come a considerable distance, and if he is unable to pay his own expenses, would constitute a "just excuse" and a warrant would be refused.

The power under this a 584 is to bring a witness even from one end of the Dominion to the other.

In consequence of the difficulty in enforcing in one province, proceedings for contempt against a witness in another province, a sub-section has been added to Code 679, by the Act of 1900, as follows:

The courts of the various provinces, and the judges of the said courts respectively, shall be auxiliary to one another for the purposes of the Criminal Code; and any judgment, decree or order made by the court issuing such subpena, upon any proceeding against any witness for contempt, or otherwise, may be enforced or acted upon by any court in the province in which such witness resides, in the same manner and as validly and effectually as if such judgment, order or decree had been made by the last mentioned court.

Commission to Examine Witnesses Out of Canada.— The evidence of a witness, on either side, who is out of Canada may be taken under commission, to be issued under order of the judge of the High Court, or County Court: Code 683. APPIDAVIT FOR COMMISSION TO TAKE EVIDENCE OUT OF CANADA. (Cope 688.)

(Heading and style of cause as in nest preceding form.)

I, A.B., etc., make oath and say:

1. I am the above named informant in this matter.

2. On or about the day of , A.D. 19 , I duly laid an information against the above named C.D., before E.F., Esquire, a , for an indictable justice of the peace in and for the county of offence, namely, that (set out the charge).

3. The prosecution of the said C.D. for the said offence is now pend-

ing before the said justice of the peace.

4. That G.H., a person who resides at , out of Canada, and is not now in Canada, is, as I am informed and verily believe, able to give material information relating to the said offence, such information being that (state in a general way the evidence the witness will give, so as to satisfy the court that it is material.

5. That J.K., of (residence and occupation), is, as I am informed and believe, a fit and proper person to be appointed a commissioner to take the evidence of the said G.H.

Sworn, etc.

If it is desired that the evidence should be taken in shorthand by a stenographer, as may be done (Code 590, s.-s. 7), add a clause stating the facts, shewing the expediency of so doing, and naming a fit person to act as such.

NOTICE OF MOTION FOR COMMISSION TO TAKE EVIDENCE OUT OF CANADA. (CODE 683.)

In the High Court of Justice.

In the County Court of the County of Huron.

(Style of cause as in preceding forms).

Take notice that an application on behalf of the above named A.B. (or C.D., as the case may be) will be made to the Honourable the presiding Judge in Chambers, of the High Court of Justice at Osgoode Hall, Toronto, (or to His Honour the Judge of the County Court of the County , in Chambers at the Court House, in the county of of on , the day of , A.D. 19 , at ten o'clock in the forenoon, or so soon thereafter as the application can be made, for anorder appointing a commission or to take the evidence viva roce, itness who resides out of Canada, upon oath or affirmation, of G.H., and is able to give material information relating to the charge of and indictable offence, for which a prosecution is now pending upon the information of the above named A.B., against the above named C.D., for that (state the charge). And take notice that the name and address of the commissioner proposed to be so appointed is L.M., of the of , in the State of , one of the United States of America (or as the case may be, adding the person's occupation). And further take notice that upon such application will be read the affidavit , this day filed, and the exhibits therein referred to. of the said

A.D. 19 . the day of Dated at

To The above named (C.D. or A.B.), and to | Solieitor for the said (A.B. or C.D.) his Solicitor.

ORDER APPOINTING COMMISSIONER TO TAKE EVIDENCE OUT OF CAMADA. (CODE 683).

(Heading and style of cause as in preceding forms.)

Upon the application of the above named A.B., and upon reading the afflavit of filed, and upon hearing both parties by their solicitors or counsel, and it appearing that G.H., who resides out of Canada, is able to give material information relating to an indictable offence for which a procedution is now pending in this matter:

1. It is ordered that J.K of (residence and occupation) be and he is hereby appointed a commissioner to take the evidence rira rore upon eath or adirmation of the said G.H., at aforesaid, and that a commission do issue for that purpose under the seal of this court directed to the said commissioner.

2. That days' previous notice of the mail or other conveyance, by which the said commission is to be sent out, shall be given by the mid A.B. to the said C.D., or to his solicitor.

Note.—Code 683 (2) in the Criminal Code Amendment Act, 1895, expressly provides that the practice and procedure on the appointment of a commissioner to take evidence out of Canada is to be, as nearly as practicable, the same as in like matters in civil causes. As to such practice and procedure in Ontario, see Con. R. 499-515; Holmested v. Langton, 677.

If the evidence is to be taken in shorthand by a stenographer insert a clause in the order and commission so providing; and provide for his being sworn: see Con. R. 509-511.

The provisions of Code 683, as to taking evidence of witnesses out of Canada, applies to preliminary proceedings before justices: R. v. Verrall, 16 P.R. 444; 17 P.R. 61.

The form of commission is furnished by the officer who issues it, and the form of commissioner's oath, oath of witness, and return to the commission are endorsed on it, with directions as to the execution of the commission which must be strictly followed.

If the evidence is taken by a stenographer the latter must first be sworn to truly and faithfu...y report the evidence: Code 590 (7).

For form of stenographer's oath see infra.

Taking the Evidence of a Witness who is in Prison.—
If a witness is in any prison (see Code 3 (u),) in Canada the justice holding a preliminary enquiry has no authority to bring such witness before him to give vidence. Code 680, as amended by the Cr. Code Amendment Act, 1900, c. 46, appears to apply only to a witness at the trial before a court

of criminal jurisdiction by indictment and not to proceedings

before justices. Such witness can only be brought before the justice under order of the Superior Court for a writ of habeas corpus ad testificandum: see Spellman v. Spellman, 10 C.L.T. 20; R. v. Townsend, 3 C.L.J. 184.

Witness Dangerously Ill .- If the evidence of a witness who is dangerously ill and not likely to recover is required, a justice has no power to issue a commission to take it, but a Superior or County Court judge may on the application of either the prosecutor or the accused, issue a commission to. take such evidence, and the evidence when taken is, in case the accused has not already been committed for trial, to be sent to the clerk of the peace or the proper officer having charge of the records and proceedings: Code 681.

APPIDAVIT FOR COMMISSION TO EXAMINE WITHESS WHO IS DANGEROUSLY ILL.

(CODE 681, 682).

In the High Court of Justice (or In the County Court of the county

In the matter of an information laid by A.B. against C.D. before E.F., Esquire, a Justice of the Peace in and for the County of for an indictable offence, to wit: for that (state the charge).

of I, A.B., of the (occupation) make oath and say:

1. I am the informant A.B. above-named.

2. On the day of A.D. 19, I duly laid an information against the above-named C.D. for the indictable offence above-mentioned, A.D. 19 , I duly laid an information and the proceedings thereon are now pending before the said justice.

a material and necessary witness, and is able to give material information relating to the said offence, and he, the said G.H., is, as he has informed me in an interview which I had with him on the of instant, willing to give such information, which is (here state in a general way the eridence which the witness is able to give so as to show

4. That the said G.H., according to the opinion of J.K., of its materiality). s duly licensed medical practitioner, which is now shewn to me marked exhibit A., to this my affidavit, and which was given to me by the said J.K. on the day of its date, is dangerously ill and not likely to recover from such illness, and the attendance of the said G.H. to give evidence

cannot by reason thereof be procured. , is a fit and 5. That L.M., a Justice of the Peace residing at proper person to take the evidence of the said witness.

6. The said C.D. is now in actual custody in the common gaol of the , and has been served with the notice now shewn to me marked "B," (see Code 682). county of

Sworn, etc.,

The opinion of the medical practitioner should, if practicable, be given in an affidavit by him.

See Code 681 as to what is necessary to be shewn on the application.

ORDER APPOINTING A COMMISSIONER TO EXAMINE A WITHESS DANGEROUSLY LL. (CODE 681, 682).

In the High Court of Justice.

The Honourable Mr. Justice

In Chambers.

Or in the County Court, etc.

His Honour
Judge of the said Court
In Chambers.

day of A.D. 19

Tuesday, the

In the matter of, etc. (as in the above afidacit).

Upon the application of the above-named A.B., upon reading the affidavits of and filed, and it appearing to my satisfaction that one G.H., a person who is dangerously iH, and who, in the opinion of a duly licensed medical practitioner, is not likely to recover from such illness, is able and willing to give material evidence relating to the indictable offence above-mentioned.

1. It is ordered that L.M., of , a Justice of the Peace in and for the county of , (or, as the case may be), be and he is hereby appointed a Commissioner to take in writing the statement on oath or affirmation of the said G.H., pursuant to section 681 of the Criminal Code of Canada, the examination of the said witness to be vica voce.

2. And is a refer ordered and directed that the keeper of the common gaoi for the county of , in whose custody the above-named C.D. now is, do convey the said C.D to the Town Hall, in the Town of , on the day of , A.D. 19 , at o'clock in the noon, being the place mentioned in the notice and C.D. of an intention to take the said statement, for the purpose of being present at the taking of the said statement. (See Code 682).

The form of Commission is supplied by the officer issuing it.

If the accused is in actual custody, the judge who makes the above order will, by an order in writing, direct the officer having the prisoner in custody, to convey him to the place where the evidence is to be taken, under the above s. 681, so that he may be present; and the expense of so doing is to be paid out of the county funds for prison maintenance: Code 682.

This order may be inserted in the order for commission (see paragraph 2 in the above form).

A notice of the time and place for taking the evidence must be "served" on the opposite party a reasonable time before the evidence is taken: Code 682, 686.

This notice must be in writing, and if a written notice is not served upon the accused, in the case of evidence being taken on behalf of the prosecution, the evidence taken cannot be used, even if the accused, being in custody, was taken to the place where the evidence was given, and was present throughout: R. v. Quigley, 18 L.T. 211; R. v. Shurmer, 17 Q.B.D. 323.

At the time and place fixed, the commissioner will proceed to take the evidence on oath, and the opposite party is entitled to cross-examine.

The statement when completed is to be signed by the commissioner, and it should also be signed by the witness, if practicable, although it is not expressly required under this section, (see also s. 686).

The commissioner is to add to the statement, a certificate, shewing who were present when it was taken, and transmit it back to the clerk of the peace for the county where the prosecution is pending: Code 681.

NOTICE OF INTENTION TO TAKE THE EVIDENCE OF A WITNESS WHO IS DANGEROUSLY 1LL.

(CODE 682, 686.)

To C.D.

Take notice that it is intended on the day of at (place where evidence to be taken) in the town of , at the hour of o'clock in the noon, to take the statement of G.H., of , on oath or affirmation, under an order of a judge of the High Court of Justice (or of the County Court of the county of as the case may be) appointing L.M., of , a commissioner to take such statement touching the matter of a charge for an indictable offence now pending against you before E.F., Esquire, a justice of the peace for the county of , upon the information of A.B. for that (state the charge).

Dated, etc.

Solicitors for the said A.B.

FORM OF DEPOSITIONS TAKEN ON COMMISSION. (To be attached and returned with the commission.)

Canada
Province of
County of

County of

Canada
The deposition of L.K., of the in the county of (occupation),

Taken on oath (or affirmation) before the undersigned E.F., the commissioner named in the commission hereto annexed, at the of the county of t

A.D. 19, under the said commission, in the presence and hearing of C.D. named in the said commission (or after notice to the said C.D.) and of A.B. (the prosecutor), also named therein (or after notice to him).

The said deponent, L.K., upon his oath (or affirmation), says as follows:-

(Here insert the witness's statement in the words used by him as nearly as possible, and at its conclusion have the same signed at the foot by the witness and also by the commissioner.)

The depositions of the above named L.K., written on the several sheets of paper, to the last of which my signature is subscribed, were taken in the presence and hearing of the above named A.B. and C.D., and signed by the said L.K. in their presence, and I further certify that the solicitor or counsel for the said A.B. (or C.D., naming the prosecutor or defendant as the case may be against whom the evidence is to be used) had (or might or would have had if he had chosen to be present, as the case may be) full opportunity of cross-examining (and did cross-examine if it be one case) the said witness, L.K., upon his said examination before me under the said commission.

Dated at

this

day of

A.D. 19 . E.F.

Commissioner.

Code 687, as amended by the Criminal Code Amendment Act, 1900, provides that the depositions of any witness taken by a justice on a preliminary or other investigation of any charge may be read at the trial (not only of the same charge, but of any other charge against the same defendant: Code 688), upon proof of facts from which it can reasonably be inferred that the witness is dead, or so ill as not to be able to travel, or is absent from Canada: and that the deposition was taken in the presence of the accused, and that his solicitor or counsel had full opportunity to cross-examine.

For instances of what is an "illness" within the meaning of Code 627: see R. v. Marsella, 17 T.L.R. 164; R. v. Katz, 17 T.L.R. 66; R. v. Jones, 3 F. & F. 285; R. v. Farrell, L.R. 2 / . R. 116; R. v. Stephenson, 31 L.J.M.C. 147; R. v. Scaife, 17 Q.B. 238; R. v. Cockburn, Dears. & B. 203; R. v. Wilson, 8 Cox, C.C. 453. The illness should be proved by medical testimony: R. v. Welton, 9 Cox, C.C. 296; and such evidence must shew the state of health, up to the time of the trial, or such a short time before as to involve the inference that the witness is at the time of the trial unable to attend: R. v. Bull, 12 Cox, C.C. 31.

When the witness was taken ill during cross-examination by the prisoner's counsel, and before it was concluded, it was held that the depositions were not receivable, as the defendant had not full opportunity to cross-examine as required by Code 686: R. v. Mitchell, 17 Cox, C.C. 503.

As to what is sufficient proof of the witness being out of Canada so as to let in depositions under Code 687: see R. v. Nelson, 1 O.R. 500; R. v. Pescaro, 2 B.C.R. 114.

The original Code 687 provided that the deposition might be used against the accused if he or his counsel or solicitor had full opportunity to cross-examine. But under the amended section (the word "he" being struck out by it), the opportunity to cross-examine must be by counsel or solicitor; and the intention is that if the accused has not been represented by counsel or solicitor the deposition cannot be used. See the remarks of the Minister of Justice in the Senate Debates, 1899, p. 554. The evidence of a constable that he could not find the witness and was told the witness was out of Canada, is not sufficient to let in the deposition as evidence on that ground, it being merely hearsay: R. v. Nelson, 1 O.R. 500; R. v. Graham, 2 Can. Cr. Cas. 388; R. v. Wellings, 3 Q.B.D. 426.

A coroner is not a "justice" within the meaning of Code 687, and the depositions taken before him are not evidence at the trial even if the witness is then dead: R. v. Graham, 2 Can. Cr. Cas. 388.

And the unsworn evidence of a child, taken under Code 685, or the Canada Evidence Act, 1893, s. 25, are not receivable as "depositions" under Code 687: R. v. Pruntey, 16 Cox, C.C. 344.

Depositions Taken on a Former Trial. — By a new paragraph (2) in the amended Code 687, in the Act of 1900, the "depositions," including those taken on a former trial of the accused upon the same charge (such as upon the first trial being abortive by the disagreement of the jury), may be given in evidence. It was a doubtful point before this amendment: see 35 C.L.J. 91, 212.

The depositions taken before a justice, in order to be admissible at the trial, under Code 687, must have been taken in exact conformity, in all respects, with the requirements of that section.

Requisites of Depositions.—The three requisites there mentioned are:—(1) That it be proved that the deposition was taken in the presence of the opposite party; (2) that his solicitor or counsel had the opportunity to cross-examine the witness; (3) and the deposition must "purport to be signed by the justice before whom it was taken."

The first two requisites may be proved by extrinsic evidence, if they do not appear on the face of the deposition; but the third cannot be so proved, but must appear on the

deposition, and cannot be otherwise supplied; for no extrinsic evidence will make the deposition "purport" to be signed otherwise than it is: R. v. Miller, 4 Cox, C.C. 166; R. v. Hamilton, 2 Can. Cr. Cas. pp. 399, 403, 409. But evidence contra may be given to shew that the deposition was in fact not so signed: Code 687.

In order to constitute the evidence in any case a regularly taken "deposition," Code 687 evidently presupposes other necessary formalities and requisites, in addition to those expressly mentioned in that section; and it may well be held that all the provisions of Code 590 (which regulates the manner in which depositions are to be taken on a preliminary inquiry) are necessary to constitute the writing a regularly taken deposition: see Attorney-General v. Davison, McClel. & Y. 160; R. v. Woodcock, 1 Leach, C.C. 500; R. v. Dingler, 1 Leach, C.C. 504.

There must necessarily be a proper caption or heading; a deposition without a caption is not receivable: R. v. Newton, 1 F. & F. 641; R. v. Milloy, 6 Legal News, 95, Q.B. 1883.

But one caption will suffice for the depositions of any number of witnesses in the same case taken on the same occasion: R. v. Johnston, 2 C. & K. 355; R. v. Hamilton, 2 Can. Cr. Cas. 390.

For form of caption and ending of depositions: see Form S. in schedule 1 to the Criminal Code.

The caption, to be in accordance with Code 590, should contain statements shewing the name, place of residence and occupation of the witness, the date and place where the deposition is taken, that it was taken under oath (or affirmation), and before the undersigned justice, describing him so as to shew that he is a justice for the county in which the deposition is being taken; being a judicial act it must be done within the justice's territorial jurisdiction. The charge must be stated shewing it to be one which he has authority to deal with, and within his territorial jurisdiction.

Certificate of Justice to Depositions.—A certificate (Form S. to the Criminal Code) must be written at the foot shewing that the deposition was taken in the presence of the prosecutor and the accused, and that his or their counsel was allowed full opportunity to cross-examine, and that the deposition was read over to and signed by the witness, and signed by the justice, in the presence of both parties, the

justice, witness and parties being all present together: Code 590, 687.

When the evidence is taken before several justices, the signature of one of them to the depositions is sufficient: Roscoe's Cr. Ev., p. 75.

As to what is a sufficient signing by the witness and justice, and the other requirements, see R. v. Hamilton, 2 Can. Cr. Cas. 390.

The usual presumption in favour of the proceedings of a judicial officer being regular, will be made if, in other respects, the depositions are in proper form: Roscoe's Cr. Ev. 72; and if the prisoner was present the presumption is that he had opportunity to cross-examine; but this may be rebutted: R. v. Peacock, 12 Cox, C.C. 21.

Admissibility of Depositions at Common Law.— Even if a deposition does not strictly comply with Code 687, it is propable that it may still be admissible at common law and apart from any statutory provision, if it is a regularly taken deposition before a justice duly holding a preliminary inquiry which is regulated by Code 590.

It was held prior to the English statute, 11 & 12 Vict., c. 42, s. 17, from which Code 687 is copied, that the taking of a deposition before a justice on a preliminary hearing was a judicial proceeding, and that, without any statutory provision, it was receivable as evidence at the trial, as a judicial record of the evidence; provided it was a properly taken deposition, and if the witness was then dead: R. v. Scaife, 17 Q.B. 238; R. v. Beeston, Dears., C.C. 405.

The intention of 11 & 12 Vict., c. 42, s. 17 (and so of Code 687) was to extend, rather than to restrict, the operation of the common law. So if the depositions are irregularly taken, and therefore cannot be used, parol evidence may be given of what the deceased witness said; and the depositions may be referred to in order to refresh the memory of the person proving it: R. v. Gaivin, 10 Cox, C.C. 198; 3 Russell, p. 558.

The justice in taking evidence on a preliminary enquiry should be careful to observe all the requirements of both ss. 590 and 687 of the Code, so that if any witness should at the time be dead or ill, or out of Canada, there may be no question as to the depositions so taken being then receivable in evidence.

Duty of Justice in taking Depositions-If several witnesses are examined in the same case on the same occasion, the depositions may be written on several sheets of paper fastened together in any manner, and the justice need not sign each witness's deposition. It is sufficient if he sign one at the end of the whole deposition so taken in the case, and such deposition has been held to be receivable under the English statute: R. v. Parker, L.R. 1 C.C.R. 225.

As to these and other requirements as to signing the depositions: see R. v. Osborne, 8 C. & P. 113; R. v. Quin, 3 C. & K. 101; R. v. France, 2 M. & R. 207; R. v. Lee, 4 F. & F. p. 65; R. v. Richards, 4 F. & F. 860; R. v. Hamilton, 2 Can. Cr. Cas. 390.

Presence of Accused.—The accused must be present during the taking of the whole evidence: Code 590 (2); R. v. Forbes, Holt, N.P. 599 (n); 3 Russell, 6th ed., 553.

If the accused is absent during a part of the time a witness is being examined, it will not suffice that the evidence taken in his absence be read over and re-affirmed by the witness in his presence. The opposite party is entitled, with a view to the due exercise of his right of cross-examination, to hear the questions and answers, and to observe how the answers are given: R. v. Beeston, Dears., C.C. 405; R. v. Johnston, 2 C. & K. 394.

Witnesses Must be Sworn .- A witness when called to give evidence on a preliminary enquiry must be first sworn: Code 590 (2); and it is not sufficient to swear him to the statements he has made after they have been taken down: R. v. Kiddy, 4 D. & R. 734. The justice is authorized to administer the oath, by s. 22 of the Can. Ev. Act, 1893; see also Code 851; R.S.O. c. 1, s. 7. It need not be administered directly by the justice. The justice's clerk, or any person by the direction of the justice, may administer it, in the latter's presence: 3 Russell, 658 (o).

Forms of Oaths and Affirmations.—The following form of oath may be used: "In the case of A.B., complainant, against C.D., defendant, you swear that the evidence you shall give touching the matter in question, shall be the truth, the whole truth, and nothing but the truth, so help you God." The usual form of attestation is for the witness to kiss the Bible. But if the witness objects on account of conscientious scruples to take an oath, or if he is objected to as incompetent

to take an oath, he may be permitted to affirm: Can. Ev. Act, 1893, s. 23.

The form of affirmation is given in this statute as follows: "I solemnly affirm that the evidence to be given by me shall be the truth, the whole truth, and nothing but the truth."

Absence of Religious Belief.—If the witness has no belief in God, or a future state, his evidence cannot be rejected on that ground, and he is to affirm in the form above given, instead of being sworn: Can. Ev. Act, 1893, s. 23. It is only a question as to the value to be placed upon such person's evidence.

A witness cannot be cross-examined with a view of shewing that he has no religious belief if he states that he has: R. v. Serva, 2 C. & K. 53; but the justice should ascertain from the witness whether he objects to taking an oath because he has no religious belief, or because taking it is contrary to his religious belief: R. v. Moore, 61 L.J.M.C. 80.

As to the different forms of oaths, according to the witness's religious belief: see Roscoe's Nisi Prius Evidence, p. 121; see also R. v. Pahmagay, 20 U.C.R. 195; R.S.C. c. 43, s. 120.

A heathen witness may make an affirmation in similar form to the above; or, in any other words, and with such ceremonies as may be in use in his tribe or country; the object being to take the evidence in such a way as will be most binding on his conscience.

Deaf Mutes.—If a witness is mute, the oath or affirmation is administered in the usual way, and he will give his evidence by signs or by written answers to questions, or in any manner in which he can make it intelligible: Can. Ev. Act, 1893, s. 6; and in the case of a deaf mute, an interpreter to communicate by signs may be sworn as in the case of a witness who does not speak the English language, or the witness may be examined by written questions and answers.

Interpreters.—If the witness cannot speak English an interpreter must be sworn as follows: "You shall well and truly interpret the evidence to be given by the witness A.B., so help you God."

The interpreter will afterwards communicate to the witness the usual oath or affirmation given on page 225, by repeating it to the witness under the directions of the justice.

Children.—If the witness is a young child the justice should first question him to ascertain whether he is aware of the nature and quality of an oath, and his moral obligations in taking it; and if so, the child may be sworn or may affirm in the usual way. But if he does not understand his obligation in taking an oath, he cannot be sworn. If, however, the justice is of opinion that the child is of sufficient intelligence to justify the reception of his evidence, and understands the duty of speaking the truth, the justice may take the child's evidence without oath or affirmation: Can. Ev. Act, 1893, s. 25; Code 685.

In such case the justice should take down the name of the child in its proper place in the depositions, and stating that the child was not sworn, giving the reason, but that he is of opinion that the child is of sufficient intelligence, and understands the duty of speaking the truth. The child may then be examined, and his statements are to be taken down in the usual way, and the deposition will be signed by the justice.

As to the question of corroboration required in such cases under s. 25 (2) of the Can. Ev. Act, see ante p. 114.

Heading of Depositions.—The caption or heading to be used in taking down the depositions of witnesses is given in Form S. to the Criminal Code. In filling out this form and taking down the evidence, the requirements of Code 590 are to be strictly followed.

Justice's Clerk and Stenographer.—The justice or his clerk (if any), or any person named by the justice, may take down the evidence in the latter's presence and that of the parties, but if a stenographer is employed, the evidence is to be taken in the manner provided by Code 590 (7).

Oath of Stenographer.—The stenographer must be first sworn (or may affirm) according to the following form:—

FORM OF OATH OF STENOGRAPHER.

You swear that you shall truly and faithfully report the evidence to be given in the matter of an information laid by A.B. against C.D.; so help you God.

FORM OF AFFIRMATION.

I, E.F., do solemnly affirm that I will truly and faithfully report the evidence to be given in the matter of an information laid by A.B. against C.D.: see Code 590 (7).

Affidavit of Stenographer.—The evidence taken by a stenographer need not be read over to or signed by the

witness, but a full transcript of the evidence is afterwards to be made out under the caption above mentioned, Form S. to the Criminal Code, and signed by the justice, with the following affidavit of the stenographer annexed: Code 590 (7).

AFFIDAVIT OF STENOGRAPHER.

Province of County of

In the matter of the King on the information of A.B. against ('.D.

In the matter of the of in the county of I, E.F., of the of in the county of I, E.F., and any

(occupation) make oath and say:

1. That I am the stenographer appointed by G.H., Esquire, one of
His Majesty's Justices of the Peace in and for the county of
to report the evidence in this case.

2. That the transcript of evidence hereunto annexed, signed by the said G.H. as such Justice of the Peace, is a true report of the evidence taken in this case before the said G.H. and taken down by me as such stenographer as aforesaid.

Sworn, etc.

Taking the Evidence.—If the affidavit is omitted, the transcript of the evidence cannot be used as evidence, unless it is signed by the witness: Code 687, 590 (7).

The depositions of a witness, whether taken down by a stenographer or in long-hand, should be taken down verbatim, or as nearly so as possible: Code 687; R. v. Graham, 2 Can.

Cr. Cas. 388.

In R. v. Thomas, 7 C. & P. 817, Parke, B., said: "Magistrates are required by law to put down the evidence of the witnesses, or so much as shall be material," not what "they witnesses, or so much as shall be material," not what "they deem material;" and that "they should make a full statement of all the witnesses say upon the matter in question."

The justice should take down everything material which may be said or done in his presence, during the course of the inquiry: R. v. Grady, 7 C. & P. 650.

Care must be taken to write the depositions legibly, and only on one side of the paper: Code 590 (b).

The evidence is to be first by questions put to the witness by the prosecutor or his counsel, followed in cross-examination by questions put by the counsel for the accused, and afterwards by re-examination by the prosecutor, the latter being limited to evidence in explanation of matters stated in cross-examination. When completed, the evidence is to be read to the witness by the justice or someone in his presence. Any corrections may be made at the witness's request before he

aigns the depositions. But the witness is not entitled under the pretence of correcting his evidence, as taken down, to change and contradict the statements he has deliberately made, but any bonu fide mistake or misunderstanding should be corrected. Anything else he wishes to say should, however, be received and added to his deposition.

Any one present before the magistrate may be called as a witness, even if not summoned: Code 585.

If a witness refuses to be sworn, or to answer questions or to produce documents when ordered by the justice; or if he refuses to sign the deposition, without offering just excuse, the justice may adjourn the case for not more than eight clear days, and may by warrant-Form O. to the Criminal Code—commit the witness to gaol: Code 585. Before doing so, the justice should note his demand upon and the refusal of the witness, and what reason, if any, the latter gives for such refusal; and the question or questions which the witness refuses to answer, should be taken down with any statement the witness makes; and the justice should himself repeat the question or make the demand upon the witness for his answer or compliance; and these facts should also be noted so as to shew the grounds on which the justice's warrant to commit the witness is issued. The accused will of course be remanded to gaol or released on bail pending the adjournment. If, before the eight days' remand has expired, the witness signifies his consent to do what is required of him, the parties should be notified and brought before the justice; and the witness's deposition will be proceeded with and completed: Code 585.

But if the witness by the time the eight days has expired, has not intimated to the justice his readiness to do what is required, he is then to be brought before the justice, and the demand is to be again made of him to do what is required; and upon his refusal the proceedings should be noted as before and the justice may again adjourn the case, and again commit the witness as before, issuing another warrant, and so on from time to time until the witness consents to do what is required: Code 585.

The justice may, however, proceed to take any other evidence, and to dispose of the case without the evidence of the witness who has been committed, if he sees fit: Code 585 (2); see further as to evidence, ante p. 106 et seq.

If a witness refuses to answer a question on the ground that his answer might tend to criminate himself, his mere statement to that effect is not sufficient to excuse him, but the justice must be satisfied from the circumstances and the nature of the case that there is reasonable ground to apprehend some danger to him from his being compelled to answer; but if it so appears, great latitude should be allowed the witness in judging for himself as to any particular question: Ex p. Reynolds, 20 Ch. 1). 294; see ante pp. 107-109.

A solicitor is not privileged from answering questions as to any fact which has come to his knowledge from other sources than from his client: Minet v. Morgan, L.R. 8 Ch. App. 361.

Warning to Accused.—When the evidence for the prosecution is completed, the justice will note that fact on the proceedings; and will then proceed in the manner directed by Code 591; and is to read to the accused the question and warning provided by s. 591 of the Code, viz.:—

"Having heard the evidence do you wish to say anything

in answer to the charge?

"You are not bound to say anything; but whatever you do say will be taken down in writing, and may be given in evidence against you at your trial. You must clearly understand that you have nothing to hope for from any promise of favour, and nothing to fear from any threat, which may have been held out to you to make any admission or confession of guilt; but whatever you now say may be given in evidence against you upon your trial, notwithstanding such promise or threat."

Statement by Accused.—What the accused then says is to be taken down in writing in Form T., contained in s. 591, Criminal Code, or to the like effect, and is to be signed by

the justice.

The statement made by the accused, and so taken down, if any, may be given in evidence at the trial against him, without further proof, unless it is shewn that the justice, purporting to have signed it, did not in fact do so: Code 689.

Under this section of the Code the provisions of the law requiring the prosecutor to prove that the accused was cautioned, and that no inducement was held out before the statement or confession to the justice was made, is sufficiently supplied by the production of the statement signed by the justice and returned with the depositions, "without further proof: R. v. Sansome, 19 L.J.M.C. 143; see R. v. Bate, 11 Cox, C.C. 686.

The statement cannot be put in as evidence on the prisoner's behalf: Russell, p. 549 (x); but if a confession is put in as evidence for the prosecution, anything contained in it is likewise evidence for the accused R. v. Higgins, 3 C. & P. 603.

It seems that if the prisoner makes a voluntary statement before the justice without the warning above mentioned, it will, nevertheless, be receivable as evidence of a voluntary confession: R. v. Saucie, 1 P. & B. (N.B.) 611.

The justice should leave it "entirely to the accused whether he will make any statement or not:" and he ought not to be disuaded from making a perfectly voluntary statement. A prisoner is not to be entrapped into making any statement, but if he is willing to do so, it is the duty of the justice to receive it and take it down in writing. If the statement is made in answer to a question by the justice, it is, nevertheless, receivable; but the latter ought only to put questions for the purpose of explaining anything the prisoner has already said. Questions calculated to lead to answers prejudicial to the prisoner should not be asked: and the power should be used with caution and discretion. Statements made by a prisoner in answer to questions or crossexamination by or before the justice will not be allowed to be given in evidence, as the influences necessarily present on such an occasion are in the same category as those which (as before mentioned) would render a confession inadmissible: 3 Russell, 542; R. v. Berriman, 6 Cox, C.C. 388.

The statement of the accused before the justice must be taken down in the actual words used: and it must not be taken on oath, or it will not be admissible at the trial: see ante pp. 119, 128, "Confessions and Admissions." The statement taken down should be read to the accused, and he should be got to sign it if he will, but he cannot be compelled to do so, and it is not required in order to make the statement valid: 3 Russell, 542.

If the statement is signed by the accused, it is receivable in evidence against him at common law, and therefore would be good evidence, even if not taken in conformity with s. 591 of the Criminal Code, and so not receivable as evidence under Code 689: R. v. Sansome, 19 L.J.M.C. 143.

If the statement has been taken down in writing in the manner required by Code 591, parol evidence cannot be given of what the accused said, unless the writing has been lost; but if not taken in writing, or if the writing is lost (or if taken in writing but not in proper form), the justice's warning, the prisoner's statement, and the magistrate's signature may be proved by parol evidence, and the evidence will be good at common law: R. v. Boyd, 19 L.J.M.C. 141; R. v. Hearn, C. & M. 109; R. v. McGovern, 5 Cox, C.C. 506.

It may be proved by the justice's clerk, or the justice, or by other satisfactory proof, that the evidence was not taken down in writing: R. v. Harris, R. & M. 338.

If it is proved that the common law requirements as to the accused being previously cautioned, was complied with, and that no inducement or threat was held out, even although the caution did not comprise all the statements in the form provided by Code 591, such evidence is receivable at common law, and independently of the Criminal Code.

So, also, if the prisoner's statement before the justice has been taken in writing, but so irregularly as not to be receivable as evidence under Code 591 and 689, the statements made by the accused may be proved like any other confession, by parol evidence by any witness; and if such witness is the justice, or justice's clerk, or other person who wrote down the statement, he may refresh his memory by referring to what he wrote: 3 Russell, 544.

Accused Not to be Sworn.—If the prisoner's statement included in the justice's return, with the depositions, purports to have been taken under oath, it will not be receivable as evidence, even if a witness states that, in fact, the accused was not sworn: R. v. Field, 16 C. P. 98; R. v. Pikesley, 9 C. & P. 124; R. v. Smith, 1 Stark. N.P. 242.

But if the prisoner was sworn by mistake, and the deposition was afterwards destroyed by the justice on discovery of the mistake, and the prisoner was then warned and his statement was taken again without oath, the latter is admissible: R. v. Webb, 4 C. & P. 564.

The statement may be impeached on behalf of the defence in the various ways stated in 3 Russell, 545.

Statements by Accused During Trial.—Besides the prisoner's statement, taken under Code 591, any observation

he may make during the progress of the case at any tage, before the justice, should be taken down in the proceedings for although the writing containing the prisoner's worst-is not itself, in such case, receivable in evidence, not be not itself, in such case, receivable in evidence, not be not itself, in such case, receivable in evidence, not be not itself, in such case, receivable in evidence, not be not itself, in such case, receivable in evidence, not be not itself, in such case, receivable in evidence, and the statute, which may be read against him, under the same of the Criminal Code: R. v. Carpenter, 2 Cox, Ct. 1885 at 15 the prisoner's observations may be proved against him by parol evidence by any witness who heard them; and the justice, or the justice's clerk, if called as such witnes may refresh his memory by reference to the writing: 3 Russi.

But a statement made by a prisoner while cross-examining a witness before the justice, and taken down in writing, forms a part of the depositions, and must be proved by production of the latter, and not by parol: R. v. Taylor, 13 Cox, C.C. 77.

statement, if any, under Code 591, the justice will proceed to ask the accused if he wishes to adduce any evidence; and if so, the justice will then take the evidence for the defence: Code 593; including that of the accused himself if he so desires: Can. Ev. Act, 1893, s. 3; Ont. Ev. Act, s. 4.

The evidence for the defence is to be received and taken down in the same manner as that for the prosecution, and such evidence as to "any fact relevant to the case" must be heard and taken down: Code 593 (2); R. v. Meyer, 11 P.R. 477; Lacombe v. St. Marie, 15 L.C. Jur. 276.

It must be confined to what is "relevant," that is, to what goes to shew guilt or innocence, but it is not receivable in a preliminary inquiry if it only bears on mitigation of punishment: R. v. Carden, 5 Q.B.D. 1.

After completing the evidence for the defence, the prosecutor may bring forward evidence "in reply" to explain any matter arising in the evidence for the accused: Code 596 (a); and if the justice sees fit to permit it, the prosecutor may also give any further evidence: Code 586 (b).

The defendant, in the latter event, should be allowed an opportunity to give evidence in answer to any new matter so brought in.

Certificate of Justice.—When the evidence on both sides is completed, a certificate will be written at the foot of the

depositions and signed by the justice in Form S. to the Criminal Code.

How Proceedings Regulated.—When the parties and their witnesses are before the justice holding a preliminary inquiry, the hearing and subsequent proceedings are regulated by Code 577, 586, 590, et seq.

The justice who took the information and issued the process, or any other justice who has jurisdiction over the subject matter, is competent to proceed with the case: Code 567. But another justice cannot intervene without the consent of the justice who has the case in hand: see p. 189.

If a case is heard before two or more justices, and they disagree, there can be no committment, unless there is a majority in favour of it. If the justices are equally divided, the case may be adjourned, and other justices (either with or without those who first heard it) may re-hear it, or a fresh information may be laid before another justice.

A discharge on a preliminary inquiry does not present the accused being brought up before another justice upon a fresh information for the same offence: R. v. Morton, 19 C.P 26; R. v. Watters, 12 Cox, C.C. 390.

If the charge is dismissed, and the prosecutor is dissatisfied with that result, he may apply to the justice to be bound over to prosecute under Code 595; or, if that has been omitted, he may apply to the Attorney-General for a flat to present an indictment: Scottstown v. Beauchesne, Q.R. 5 Q.B. 554.

If a preliminary inquiry is begun before one justice and completed before two justices, it is irregular, and the proceedings will be void, unless both justices heard the whole of the evidence: Re Nunn, 2 Can. Cr. Cas. 429.

The justice may in his discretion regulate the course of the inquiry in any way not inconsistent with the law: Code 586 (e). He may permit or refuse to allow the prosecutor or his counsel to sum up the case; but he cannot refuse the accused, or his counsel, that right: Code 586 (a).

The justice may change the place of hearing: Code 586 (c); and he may exclude all persons except the prosecutor and defendant and their counsel from the room or building, if it appears to him that the ends of justice will be best answered by so doing. The place of hearing on a preliminary inquiry is not an open court to which the public have the

right of access as they have in summary trials: Code 586 (d). And now under Code 550 (d), added by the Act of 1900, c. 46, the justice should order the exclusion of the public on the hearing of any case in which the justice is of opinion that it will be in the interests of public morals.

The accused may waive the preliminary examination and consent to be committed for trial without any evidence being taken: R. v. Gibson, (S.C.N.S.) 3 Can. Cr. Cas. 451; or he may admit any facts, so as to dispense with their proof: Code 690.

Remands After Evidence Taken.—The evidence having been taken and the parties fully heard, the justice may either determine the case at once, or he may adjourn it for further consideration, remanding the accused to gaol—Form P. to the Criminal Code—or taking bail as before mentioned—Form Q. to the Criminal Code; s. 586 (c).

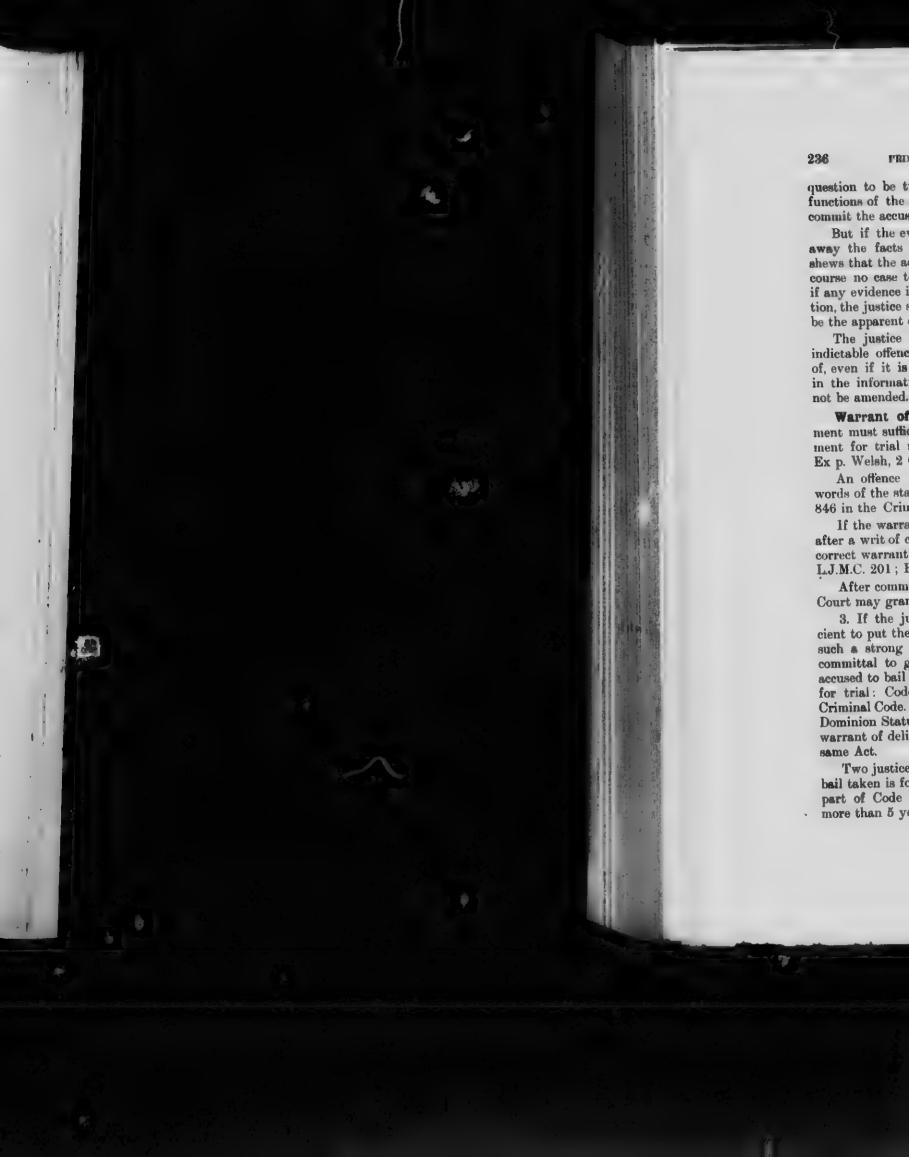
The justice cannot adjourn the case sine die and afterwards commit the accused in his absence; but he must fix a definite time and place. The accused has the right to be present when judgment is given, in order to protect his interests: R. v. Quinn, 2 Can. Cr. Cas. 153.

Disposition of Case on Preliminary Enquiry.—There are four ways in any one of which the justice may deal with the case.

- 1. By dismissal: Code 594.
- 2. By committing the accused for trial: Code 596. Warrant Form V. to the Criminal Code.

The question for the justice is, whether or not the evidence is sufficient to put the accused upon his trial. If upon the whole evidence, for the prosecution as well as for the defence, he is of opinion that no sufficient case has been made out to put the accused upon trial, he will dismiss it: Code 594.

The justice is not to try the case, nor any controverted point in the case; he is not to weigh the evidence, nor decide as to the truth between conflicting statements upon any material point; nor is he to decide upon a preponderance of evidence in favour of the accused, even though it should appear to be strongly in his favour. It is for the jury to decide upon these points, under the judge's direction, at the trial. If upon the whole evidence, there is any substantial



ion to be tried, the justice has no right to assume the ions of the judge and jury by trying it, and he should not the accused for trial.

But if the evidence for the defence conclusively explains the facts on which the prosecution is founded, and s that the accused is not guilty of the offence, there is of se no case to be sent for trial; while on the other hand y evidence is given which, if true, would justify convicthe justice should commit for trial, no matter what may be apparent cogency of the evidence in contradiction.

The justice may commit the accused for trial for any stable offence which the evidence shews him to be guilty ven if it is an altogether different offence from that laid he information; and in such case the information need be amended. See on this subject p. 205, ante.

Warrant of Committment.—The warrant of committ must sufficiently describe an offence for which committ for trial may legally be made, otherwise it is invalid: p. Welsh, 2 Can. Cr. Cas. 35.

An offence is now sufficiently described by using the ds of the statute relating to it: see the amended section in the Criminal Amendment Act, 1900.

If the warrant should be defective, the justice may, even r a writ of certiorari has been issued, make out a new and ect warrant and return it with the writ: Ex. p. Cross, 26 M.C. 201; Re Plunkett, 1 Can. Cr. Cas. 365.

After committal for trial, a judge of a Superior or County art may grant bail, but the justice cannot do so.

3. If the justice is of opinion that the evidence is suffict to put the accused upon his trial, but does not furnish he a strong presumption of his guilt as to warrant his mittal to gaol to await trial, the justice may admit the used to bail with one or more sureties for his appearance trial: Code 601; see recognizance, Form B.B. to the minial Code. An amended form is given at the end of the minion Statute for 1900; and also an amended form of trant of deliverance, Form C.C., is given at the end of the ne Act.

Two justices, or a police magistrate, are required when the l taken is for one of the offences referred to in the first of Code 601, viz., an indictable offence punishable by re than 5 years' imprisonment (other than cases of treason

or an offence punishable with death, in which latter cases bail cannot be taken, and section 601 does not apply).

If the offence is one punishable by less than five years' imprisonment—that is, any indictable offence other than those above enumerated—the justice who heard the case, or any other justice having jurisdiction, before whom the accused appears, may alone take bail. In any of the above cases in which bail is taken, the justice or justices may require the surety to justify, on oath or affirmation, as to his property and sufficiency as bail: Code 601; see form of affidavit of justification ante in chapter on "Certiorari."

The question is as to the property qualification rather than the character and standing of the bail: R. v. Saunders, 2 Cox, C.C. 249; R. v. Badger, 4 Q.B. 468.

The recognizance may be conditioned for the appearance of the accused for trial at the next General Sessions, if the Sessions has jurisdiction, even if the Assizes should intervene: see added s.-s. 3 to Code 601, in the Criminal Code Amendment Act, 1900, c. 46. This amendment was intended to prevent petty cases from being sent to the Assizes. The cases over which the General Sessions has jurisdiction include all indictable offences, except those specified in Code 540, as amended by the statute of 1894, c. 57, and 1900, c. 46.

If the accused does not offer sufficient bail, the justice or justices may commit the accused to gaol by warrant: Form B.B. to the Criminal Code. The accused, although not "committed for trial," may be tried before the County Judge's Criminal Court, if the justice has sent him to gaol under the above provisions for default of sureties, or if the sureties afterwards render him to gaol under Code 910: see Amended Code 765 (2) in the statute of 1900, c. 46.

When a person has been committed for trial under Code 596; or if the prosecutor has been bound over to prosecute under Code 595; see p. 238; the accused may be tried for the offence charged, or for any other offence whatever, founded upon the same facts as disclosed in the depositions taken before the justice: Code 641; and this may be done although the venue has been changed to another county: Code 651 (2): Goodman v. The Queen, 3 O.R. 18; R. v. Coleman, 30 O.R. 93; R. v. Paterson, 26 O.R. 656.

But the accused may at any time before the petit jury is sworn apply to the court to quash the indictment, on the ground that it is not so founded; and if at any time during the trial it appears that any count is not so founded, and that injustice is likely to be done in consequence, the court may quash such count: see the amended Code 641 in the statute of 1900.

By s.-s. 2 (now s.-s. 3 of the amended s. 641) in the original statute, the Attorney-General, or anyone by his written consent, or that of a judge of any court of criminal jurisdiction, may prefer an indictment for any offence specified in such consent. This is supplemented by the amended s.-s. 2 in the Act of 1900: and the crown counsel at any court of criminal jurisdiction also has authority to prefer a bill of indictment for any offence founded on the facts disclosed in the depositions, and any person may do so by order of the court: amended s.-s. 3.

Save in one of the ways provided by the above s. 641, as so amended, no bill of indictment can be preferred in any court: amended Code 641, s.-s. 5. Objections to an indictment for want of the consent of the Attorney-General, or order of the court, must be taken by motion to quash the indictment before the jury is sworn: amended s.-s. 4. The consent of the Attorney-General, when required, must have been given in the particular case.

Dismissal of Case — Prosecutor may be Bound. — (4). If the justice dismisses the case, the accused is entitled to be at once discharged; but the prosecutor, if he desires to carry the case before the Grand Jury, may do so, and upon his request, the justice must bind the prosecutor to prosecute an indictment against the accused before the Grand Jury at the next court of competent jurisdiction: Code 595.

The justice cannot refuse this request, but must take the prosecutor's recognizance to prosecute, if the information or evidence shews that an offence known to the law is charged: R. v. Eyre, L.R. 3 Q.B. 487: R. v. London (Jus.), 16 Cox, C.C. 77; but not otherwise. As for instance, in case of a charge of conspiracy, and the particulars shew that the charge was an impossible one, the justice rightly declined to bind over the prosecutor: Ex p. Wason, L.R. 4 Q.B. 573. For form of recognizance see Form W. to the Criminal Code

Witnesses' Recognizance to Appear at Trial.—If the justice commits the accused for trial, he should take the witnesses' recognizance to appear and give evidence: Code 598; Form Y. to the Criminal Code. If a witness refuses to be bound over, the justice may commit him to gaol: Form Z. to the Criminal Code: till the trial, or until he consents to be so bound over, in which latter event, any justice of the county may take the witness's recognizance: Form Y. above referred to; and may issue an order for the witness's release from custody: Form A.A. to the Criminal Code; see Code 599.

The justice who commits the accused may also bind over the prosecutor to appear and prosecute, if he consents to do so: Form W. to the Criminal Code; and also to give evidence. if the prosecutor is also a witness, adding Form X. to the Criminal Code: Code 598.

Absconding Witness.—If a witness who has been bound over by recognizance to give evidence before a justice, or any Criminal Court, is about to abscond, or has absconded, any justice for the county may take an information from any person, in the form and in the same manner as an information is laid for a criminal offence, as pointed out on p. 185: Code 598 (6). The following may be used as a form to be filled in the information:—

Information Against Absconding Witness,

Canada.
Province of
County of

The information and complaint of A.B., of (yeoman), taken on oath this day of , in the year the undersigned, one of His Majesty's Justices of the Peace in and for the county of , who saith that C.D. was lately charged before E.F., Esquire, a Justice of the Peace in and for the county of for that (here set out the charge in the original complaint in respect of which the witness has been bound over), and upon the hearing of the said charge, G.H., of , was, on the day of , A.D. 19 duly bound by recognizance taken before the said E.F. (or other justice) to appear and give evidence at the trial (or hearing) of the said charge by this court (or before the justice naming him), by which (or before whom) the said C.D. is to be or shall be tried: and that the said C.D. is about to abscond (or has absconded).

Sworn before me the day and year first above mentioned at

J.S., J.P. County of

Upon receiving such sworn information, a warrant may be issued for the arrest of the witness: Code 598 (6).

WARRANT FOR ABSCONDING WITHESS. ('ODE 598 (6).

Canada Province of County of

To all or any of the constables and other peace officers of the county

Whereas C.D. was lately charged before E.F., a Justice of the Peace in and for the said county of . for that (set out the charge).

And whereas, upon the bearing of the said charge, G.H., of And whereas, upon the bearing of the said charge, G.H., of was, on the day of A.D. 19, duly bound by recognizance taken before the said E.F. (or other justice) to appear and give evidence at the trial (or hearing) of the said charge by the Court (or before the Justice, naming him) by which (or before whom) the said ('.I), is to be or shall be tried.

And whereas information has been duly made in writing and on oath before me , a Justice of the Peace in and for the said County of , that the said G.H. (the witness) is about to abscond (or has absconded.

These are therefore to command you, the said peace officers, or any one of you, to take the said G.H. and to bring and have him before me on the day of A.D. 19, at o'clock in the noon, at the Town Hall, in the of, in the County of , or before such other Justice or Justices of the Peace for the same County as shall then be there, to answer the said matter, and to be further dealt with according to law.

Given under my hand and seal this day of , A.D. 19 .

[Seal.]

J.P. County of

The arrest may be made in the same way as arrests are made under an ordinary warrant, and the matter will be proceeded with in like manner: see p 193; the warrant being "backed" as described at p. 195, if the witness is to be arrested in another county. The witness may be arrested anywhere in Canada; and is to be brought before the justice, who will proceed to take evidence, and to hear all the parties as before described in dealing with a criminal charge; and if from the evidence the justice is satisfied that the ends of justice will be otherwise defeated, he may commit the witness to gaol until the trial unless in the meantime the witness produces sufficient sureties for his appearance: Code 598 (6). The warrant may be similar to Form Z. to the Criminal Code, making necessary changes to meet the facts of the case.

The witness, upon being so arrested, is entitled to demand and receive a copy of the information upon which the warrant for his arrest has been issued: Code 598 (6). The constable should therefore be furnished with a copy of the information for that purpose. If the witness produces sureties for his appearance at the trial, any justice may take the recognizance, which may be similar to Form Y. to the Criminal Code, making necessary changes; and an order for his release, similar to Form A.A. to the Criminal Code, will be issued. The witness' sureties may be called on to justify under oath to their sufficiency in the form given, ante p. 9.

Copies of Depositions.—A person who has been committed for trial on a criminal charge, is entitled at any time before the trial, to have copies of the depositions and of his own statement, from the justice, or other officer who has charge of them, upon payment of five cents per folio of one hundred words: Code 596.

Proceedings to be Sent to Crown Attorney. — The information, depositions of witnesses, exhibits, the statement of the accused (if any), and all recognizances, with any depositions taken before a coroner, are to be transmitted by the justice to the county crown attorney as soon as may be after the accused has been committed: Code 600: R.S.O. c. 96, a. 10.

Bail.—After the committal of the accused for trial, the justice has no power to take bail, no matter what the charge is. The order for bail can only be made by a judge under Code 602-604. These sections do not authorize an order for bail by a judge pending an adjournment of a preliminary enquiry, but only after commitment: R. v. Cox, 16 O.R. 228.

Upon application being made to a judge for bail, the justice is required, on receiving notice, to transmit certified copies of all the papers to the clerk of the court to which the application is to be made, viz.: to the clerk of the Crown, Osgoode Hall, Toronto: or to the clerk of the County Court, as the case may be. The packet, sealed and addressed containing such copies is to be delivered to the person applying for them, for transmission: Code 604. For the penalty for neglect in this respect see Code 604 (3).

Upon a judge's order for bail being brought before any two justices of the county where the accused is confissed, the justices may cause notice to be served upon the prosecutor stating the amount of bail and the names and addresses of the proposed sureties: and at the time and place stated in the notice, the accused and his sureties are to be brought

before the justices, who will take their recognizance, which may be in a form similar to Form B.B. to the Criminal Code.

The justices may before mking the recognizance, require the proposed sureties to be sv and examined on behalf of the prosecutor as to their property and liabilities. No question can be put to them pt as to their property and means. The justices are decide as to the sureties' sufficiency; and if they are not sufficient, others must be obtained, and the accused will meantime remain in custody.

Upon taking the recognizance of bail, the justices are to issue a warrant of deliverance-Form C.C. to the Criminal Code-see Code 602 (2), and 605, and the warrant of deliverance, with the judge's order of bail attached—Code 602—are to be delivered to the gaoler, who must forthwith release the accused, unless he is detained for some other offence: Code

Surrender of Bail .- If, after the accused has been released on bail, there is reason to believe that he is about to abecoud, one of the sureties, or some person by his authority, may appear before any justice and lay an information in the following on the territory

FORM OF INFORMATION.

Canada. Province of County of

of in the The information of A.B., of , A.D. 19 day of (occupation), taken this before the undersigned K.L., one of His Majesty's Justices of the Peace in and for the county of , who saith that the mid A.B., tegether with C.D. (insert names of sureties), were on the day of , A.D. 19 , duly bound by recognizance before E.F., Esquire, a Justice of the , conditioned for the appear-Peace in and for the said County of ance of G.H., at the then next Court of competent jurisdiction (or as the case may be), and then and there surrender himself into the custody of the keeper of the common gaol at , in the said County, and plead to such indistment as should be found against him by the grand jury, in respect of a charge upon which he had theretofore been committed for trial namely: for trial, namely: (state the charge), and stand his trial thereon and not depart the said Court without leave; and that there is reason to believe that the said G.H. is about to absected for the purpose of evading justice in the premises. (Bgd.) A.B.

Sworn, etc. (Sgd.) K.L., County of

On hearing the facts alleged, the justice may issue a warrant for the re-arrest of the accused: Code 606.

WARRANT TO APPREHEND, Under Code 406.

Canada. Province of County of

To all or any of the Constables and Peace Officers of the said County of

Whereas A.B. and C.D. were on the day of A.D. 19 duly bound by recognizance before W., Empire, a Justice of the Peace in and for the said County of conditioned for the appearance of G.H. at the next Court of competent jurisdiction (or as the cause may be, following the statement in the above information), and then and there surrender himself into the custody of the keeper of the common gaoi at the said County, and plead to such indictment as should be found against him by the grand jury, in respect of a charge upon which he had therefore been committed for trial, namely: (state the charge), and stand his trial thereon, and not depart the said Court without leave. And Whereas information has been this day laid before the undersigned K.L., a Justice of the Peace in and for the said County of , by (or, on behalf of) the said A.B. and C.D. (or, as the case may be), that there is reason to believe that the said (b.H. in about to abscond for the purpose of evading justice in the premises.

These are therefore to command you the said Constables, or other Peace Officers, or any of you, in His Majesty's name, forthwith to apprehend the said G.H., and to bring him before me, or some other Justice or Justices in and for the said County of , in order that he may be further dealt with according to law

Given under my hand and Seal at the County of , this day of , A.D. 19 .

(Sgd.) E.F.,
J.P.,
County of .

The warrant may be executed in the manner described at p. 193, for the arrest of the accused in the first instance.

Upon the accused (and the prosecutor, who should also be notified) being brought before the justice, evidence will be taken in the usual way; and if the evidence satisfies the justice that the ends of justice would otherwise be defeated, he may commit the accused to prison until his trial, or until the accused produces other sufficient surety or sureties in like manner as before: Code 606.

WARRANT OF COMMITMENT,

(CODE 606).

Proceed as in the next preceding form down to the asterisk *.

And whereas I (or the said , naming the Justice who issued the above warrant to apprehend) did thereupon issue my (or his) warrant to the Constables and all other Peace Officers for the said County to apprehend the said G.H., and bring him before me (or the said

), or some other Justice or Justices in and for the said County, to be dealt with according to law.

And whereas the said G.H. has been apprehended under the said warrant, and is now brought before me, the undersigned, one of His Majesty's Justices of the Peace in and for the said County of and it thereupon appearing to my satisfaction, upon hearing the evidence then adduced in the presence of the said G.H., that the ends of justice would otherwise be defeated;

These are therefore to command you, the said Constables or Peace Officers in His Majesty's name, forthwith to take and safely convey the said G.H. to the said common gaol at in the said County of and there deliver him to the Keeper thereof; and I hereby command you, the said Keeper to receive the said G.H. into your custody in the said common gaol, and him, there safely to keep until his trial, or until he produces another sufficient surety or sureties in this behalf.

Given, etc.

If other sureties are allowed to be given, and are produced, two justices, without any further order, may take a new recognizance in the same manner as before, and issue another warrant of deliverance: see ante p. 242.

2. Summary Convictions by Justices.

Under Dominion and Provincial Laws.—Summary trials, before justices of the peace, for offences against the Criminal Code, or other Dominion laws, or under Imperial laws in force in Canada—as to which see p. 34—are regulated by s. 839, et seq. of the Criminal Code.

Summary trials for offences against Ontario statutes, and municipal by-laws, and other laws within the purview of the Ontario legislature, are governed by R.S.O. c. 90, "The Ontario Summary Convictions Act." This Act provides that the proceedings for recovering the penalty, compelling the attendance of witnesses, herring the case, the conduct of the court, the taking and estreating of recognizances, and the infliction of punishment, and otherwise in respect of such proceedings, are to be the same as in cases under the Criminal Code. So the practice and forms are to be the same, in regard to the particular proceedings above specified, whether the prosecution is under a Dominion or Ontario law.

Any amendments in this regard, to the Criminal Code, passed subsequently to R.S.O. c. 90, are also to be read into the Ontario statute; but are not to come into force until after the next ensuing session of the Ontario legislature, after the passing of such amendments: R.S.O. c. 90, s. 12. In other respects than those above designated, the practice in cases under Dominion law, and those under Ontario laws,

differ; as for instance, in regard to costs, appeals, witnesses and evidence, etc.

The proceedings on a summary trial before a justice are, by Code 843, to be similar as far as practicable (and except as varied by s. 844, et seq.) to those provided for preliminary inquiries on indictable offences under s. 554, et seq.

Except as noted below, the foregoing directions, commencing at p. 185, are applicable to summary trials in cases under Dominion laws, as well as under Ontario laws.

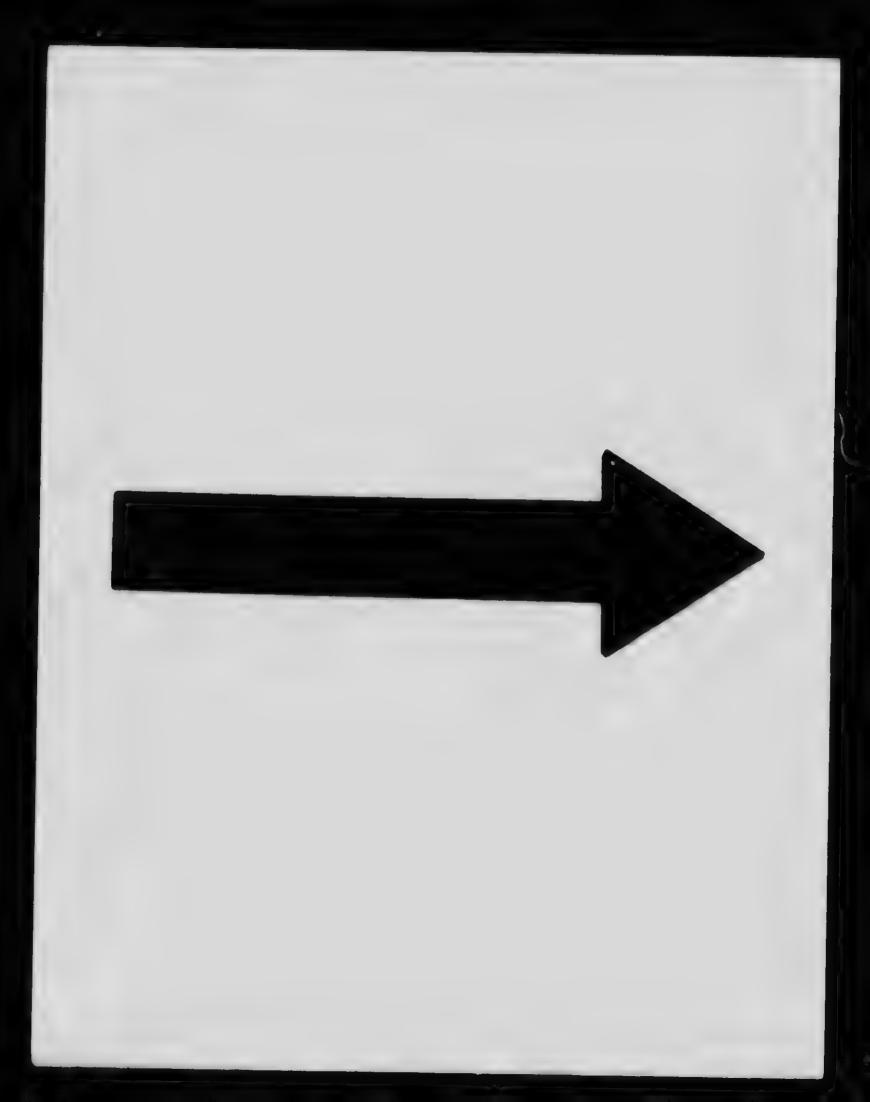
Jurisdiction.—The summary jurisdiction of a justice is exclusively statutory; and is limited to those matters over which such jurisdiction is conferred upon him, either expressly or by necessary implication, in particular matters, by some statute, without which he has no authority whatever to try any matter summarily, or to award punishment: R. v. Carter, 5 O.R. 651; R. v. Craig, 21 U.C.R. 552.

But although the statute, in a particular case, may not in express terms, give the justice summary jurisdiction; yet if it provides a penalty, or punishment on summary conviction for its breach, s. 840 (a) of the Criminal Code applies, and gives a justice jurisdiction to deal with the case under the summary clauses of the Criminal Code; and by R.S.O. c. 90, s. 2, the same provision is applied to cases under Ontario laws: Cullen v. Trimble, L.R. 7 Q.B. 416.

In all cases of summary trials, one justice has jurisdiction, unless the particular statute relating to the offence or matter requires that it is to be heard before two justices: Code 842 (2); see R.S.C. c. 1, s. 7 (36); R.S.O. c. 1, s. 8 (22). When two justices are required, the whole of the trial must take place before them both, acting together: ('ode 842 (2), (6); R.S.C. c. 1, s. 7 (35); R.S.O. c. 1, s. 8 (22).

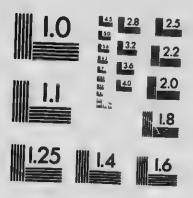
A conviction by one justice when a magistrate or two justices are required by law, is invalid and will be quashed: R. v. Plows, 26 O.R. 339.

Where the "prosecution" is required to be brought before two justices, they must both be present when the information (which is the bringing or institution of the prosecution) is laid; and they should both be named in it, and stated as being present together, but the information need only be signed by one of them: R. v. Brown, 23 N.S.R. p. 21; R. v. Ettinger, 3 Can. Cr. Cas. 387.



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But if one justice acts alone in a case requiring two justices, and the defendant appears and defends without objection, it is waived: R. v. Starkey, 7 Man. R. 489.

Generally, one justice may receive the information and issue the summons or warrant, and issue the process for witnesses, and do everything preliminary to the hearing, although the statute requires the case to be heard before two justices: Code 842 (3), unless the particular statute relating to the offence otherwise directs. If two justices are required to hear the case, and part of the evidence be taken before one of them, the second justice subsequently attending, the witness must be re-sworn and again give his evidence. It is not sufficient that the evidence 'taken before the one justice be read over in presence of the other justice; although if that is done without objection the irregularity is waived: R. v. Jeffreys, 22 L.T. 786; Dixon v. Wells, 25 Q.B.D. 249, distinguishing R. v. Hughes, 4 Q.B.D. 614.

Unless otherwise specially provided, by the statute relating to the offence, the justice who acts in the proceedings anterior to the hearing, need not be the justice or one of the justices who try the case. Any justice may take the preliminary proceedings, and the same or any other justice may hear the case, and still another justice may issue the process to enforce conviction: Code 842 (5); R.S.O. c. 90, s. 2; see R. v. Duggan, 21 C.L.T. 35.

But the justices who act in any of the proceedings must be justices for the territorial jurisdiction where the offence or matter arose, unless otherwise provided by statute; a justice has no summary jurisdiction over an offence not committed within his territorial jurisdiction: Code 842 (2). And jurisdiction is not conferred in such a case by the accused appearing and defending without objection; nor by waiver. Jurisdiction over the subject-matter cannot be conferred by waiver, or even by consent: Johnstone v. Colam, L.R. 10 Q.B. 544; see R. v. Brown, 31 N.S.R. 401; and p. 182, ante, "Waiver and consent."

Any number of justices may hear the case, as all are of co-ordinate jurisdiction; but no justice is permitted to interfere in a case of which another is seized, unless at the request of the latter: R. v. McRae, 28 O.R. 569; and see ante p. 140.

The above provisions of Code 842 (5), do not authorize a justice to issue a summons or warrant to apprehend. upon

an information taken before another justice; and the warrant, or summons, so issued will be void. Section 842 (5) of the Criminal Code, indicates that the justice who acts before the hearing, must not only take the information but also issue the process, although he need not be the justice who hears the case. Moreover, it is provided by Code 559 (which is made applicable to summary proceedings by Code 843), that the justice who receives an information, is to hear and consider the allegations of the complainant, and decide whether there is a proper case for issuing a summons or warrant. This is inconsistent with the information being taken before one justice, and the process being determined upon by another: Dixon v. Wells, 25 Q.B.D. 249, at p. 254; see also R. v. Stone, 23 O.R. 46.

Offences Triable Summarily.—The offences and matters which are within a justice's authority to try summarily are of two classes. (1). Penal offences, or contraventions of the law. (2). Quasi civil matters arising under statutes, conferring upon justices the power to order payment of a money demand; such as the payment of wages by a master to his employee: R.S.O. c. 157, s. 11: or the performance of some act, as an order to compel an apprentice, who absents himself without leave, to serve for as long an additional time as he has been absent: R.S.O. c. 161, s. 18.

Requisites of Information.—In the former class of cases, an information is to be laid in writing, but it need not be under oath: Code 845 (2); and in the second class, a complaint will be laid, but it need not be under oath: Code 845 (2): nor even in writing: Code 845 (1): unless in either case the particular statute relating to the offence or matter expressly so requires.

If a warrant to apprehend is to be issued, the information must, in any case, be in writing and under oath, notwithstanding the provisions of Code 845 (2). The recital in the form of warrant—F. to the Criminal Code—states that an information under oath has been laid: Caudle v. Seymour, 1 Q.B. 889; R. v. MacDonald, 3 Can. Cr. Cas. 287.

And if the particular statute on which the case is founded so requires, the information must be under oath; and in all cases it is a proper safe-guard to require the person who charges another with an offence to pledge his oath to the bona fides of the charge, and the information, as

a matter of expediency, should always be under oath or affirmation.

For forms of oath or affirmation see p. 225, ante.

The form of information or complaint is provided in the schedule to the Criminal Code; Form C., and the form of charge to be inserted, is given under the several heads of offences infin.

By Whom Information may be Laid.—The information need not be laid by the prosecutor personally, but may be laid either by him, or his counsel or solicitor, or any other person, by his authority: Code 845 (3).

As a general rule, any person may lay an information or complaint: but in cases of private injuries, where compensation is sought, the person injured must be the complainant, or someone authorized by him: Paley, 6th ed., 73.

And where an act (as a trespass under the Petty Trespass Act) must, to be unlawful, be done against the consent of the owner of the property, the information must be laid on his behalf, or at his instance: *Ib*.

A complaint against a tenant for fraudulent removal of goods must be laid by the landlord, or someone authorized by him: Paley 74 (a). And in all cases where the particular law expressly requires it, the information must be laid by the party aggrieved.

Some offences can only be prosecuted by or with the leave of the Attorney-General or other functionary: see ante p. 166.

Any person may prosecute for an infraction of a municipal by-law, and the prosecution need not be on behalf of the municipality, even when the whole penalty goes to the municipal corporation: R. v. Chipman, 1 Can. Cr. Cas. 81.

Against Whom Information to be Laid.—The information must generally be laid against the person who actually commits the act constituting the offence. But in some cases the charge must be laid against the employer and not against the servant who is following his employer's instructions, or who is acting within the scope of his authority, as in the case of a street-car being run without the proper guards, being required by law; or, in the case of dangerous goods being sent by railway; or locomotives being used on the highway without the precautions required by the law regulating them.

In such cases the street railway company or the proprietor is responsible: see R. v. Toronto Ry. Co., 30 O.R. 214; Chapman and London, 19 O.R. 33; R. v. T. Eaton Co., 29 O.R. 591; A. & E. Ency., 2nd ed. 115; Consumers Gas Co. v. Toronto, 23 A.R. 551; R. v. Verral, 18 O.R. 117.

A master is liable for the act of his servant within the general scope of his employment, even if done contrary to orders of the master: R. v. McAuley, 14 O.R. 649; Commissioners v. Cartman (1896), 1 Q.B. 655; R. v. Stephens, L.R. 1 Q.B. 702.

But if the act complained of was such that mens rea is essential, the master cannot be held responsible criminally for the servant's malice, nor for his wilful negligence. A master is not responsible for death caused by the servant's negligence nor for the latter's guilt in receiving stolen goods, nor for his violation of a statute, unless the statute makes the act punishable in the absence of mens rea: Chisholm v. Doulton, 22 Q.B.D., p. 741. See upon this subject the remarks ante p. 161.

Death of Informer.—Criminal proceedings do n. .bate upon the death of the informer: R. v. Truelove, 5 Q.B.D. 336.

Description of Offence.—The information need not describe the offence in the words of the statute: Re Perham, 5 H. & N. 30; nor allege that the offence was against the form of the statute: R. v. Doyle, 2 Can. Cr. Cas. 335.

Prior to the Dominion Act of 1900, c. 46, it was held in many cases that it was not sufficient for the information or conviction to be in the words of the statute; but that the nature and quality of the acts must be stated: Anderson v. Wilson, 25 O.R. 91; R. v. Bradlaw, 3 Q.B.D. 607; Cotterill v. Lempriere, 24 Q.B.D. 634; R. v. Coulson, 24 O.R. 246; R. v. Spain, 18 O.R. 385.

But by the ^ct of 1900, c. 46, s. 846—which came into force on 1st J v., 1901—it is declared that the description of any offence the words of the statute or of any order, by-law, regulation or document, creating the offence, or any similar words are sufficient; but this does not apply to prosecutions under the provincial laws: but see R. v. Toronto Ry. Co., 21 C.L.T. 120.

Particulars should be ordered, as provided by Code 846, especially where the words describing the charge and follow-

ing the words of the statute do not furnish sufficient information to the defendant.

Only One Offence to be Charged.—The information or complaint must be for one offence or matter of complaint only: Code 845 (3). An information or conviction which states a continuing offence to have been committed on a certain day and on other previous days, is for only one offence; and is sufficiently definite: R. v. Williams, 37 U.C.R. 540.

But if more than one offence ir stated in the information, the defect is one "in substance or in form" within the meaning of the curative sections of the Code (847 and 882), and does not of itself invalidate an otherwise valid conviction for only one of the offences charged: R. v. Bennett, 1 O.R. 445; R. v. Hazen, 20 A.R. 633; see Paley, 7th ed., 85.

If, however, the defendant objects on this ground, and the justice nevertheless proceeds to try both charges together and convicts on one of them, the conviction is invalid.

The justice should, on objection being taken, call upon the prosecutor to elect which charge he will proceed with: R. v. Hazen, 20 A.R. 633; Rodgers v. Richards (1892), 1 Q.B. 555.

If, however, several offences are stated in the information, and the justice proceeds and convicts upon one of them without objection, the conviction is valid if it shews which offence the conviction is for: R. v. Chandler, 14 East, 267; R. v. Hazen, supra, approved and followed in R. v. Smith, 46 U.C.R. 442, and R. v. Hartley, 20 O.R. 481; see R. v. Alward, 25 O.R. 519; R. v. Lapierre, 1 Can. Cr. Cas. 413. But in a case where two offences were charged and a conviction made, and one penalty was imposed, but it did not appear for which offence, the conviction was held to be bad, as it could not be pleaded on a subsequent charge upon either of the offences: R. v. Solomons, 1 T.R. 251; R. v. Young, 5 O.R. 184 (a).

But although two offences are charged, yet if it sufficiently appears for whi hof them the penalty was imposed, the conviction is valid. R. v. Chandler, 14 East, 267; see R. v. Young, supre; but a conviction under the Indian Act for giving and selling liquor to an Indian is not a conviction for two offences: R. v. Monaghan, 34 C.L.J. 55; nor a conviction for several acts on the same day for practising as an apothecary without a certificate: Oxford Trans. Co. v. Sankey, 54

J.P. 52, 564; see also Davis v. Loach, 51 J.P. 118; Bartholomew v. Wiseman, 56 J.P. 455.

If a defendant is before a justice at one time for two separate offences, the justice must dispose of the one first tried before entering upon the other, as the defendant has the right to any benefit which might be derived from a dismissal of the first charge, and each case must stand upon its own merits: Hamilton v. Walker, 2 Q.B. 25.

And this is so, even if the charges are wholly distinct from each other, and on separate informations. Section 857 of the Criminal Code does not authorize an adjournment of one of the cases for adjudication, and then proceeding with another charge against the same person before such adjudication. If the justice requires time for consideration of the first case he must adjourn the second one also, and not enter upon the latter until he has disposed of the former: R. v. McBerny (N.S.), 3 Can. Cr. Cas. 339.

Section 907 of the Criminal Code provides that no information, summons, conviction or order, is to be held to charge two offences, or to be uncertain by reason of the offence being stated to have been committed in different modes or in respect of one or other of several articles conjunctively or disjunctively; as for example, in charging an offence under Code 598, the information may properly charge that the defendant did cut, break, root up, or otherwise destroy a tree, or sapling or shrub, without stating the offence more particularly: see R. v. Williams, 37 U.C.R. 540. A justice cannot refuse to receive an information; see ante p. 62. In this respect the provisions regarding proceedings for an indictable offence apply. Upon receiving the information the justice must hear and consider the complainant's statements, and adjudicate whether there is or is not sufficient ground for proceeding further with the case: see Code 559, which is made applicable to summary trials by Code 843. If he finds upon the facts stated that there is not a prima facie case he should dismiss it without further proceedings. As to the duty of the justice in this respect: see ante p. 189.

If the justice dismisses the case without further proceedings, it is submitted that an appeal will lie from such adjudication. If the justice decides to proceed with the case he has then to consider whether a summons or warrant to apprehend should be issued in the first instance; as to which see observations at p. 190; and see O'Brien v. Brabner, 49

J.P. 221, deciding that a warrant should only be issued in the first instance, if a summons is likely to lead to the defeat or delay of justice: see also R. v. Staffordshire (Jus.), 5 N. & M. 94.

A summons and not a warrant must be issued on a complaint for payment of money merely: Paley, 6th ed., 90.

Process not to Issue without an Information.—The justice has no authority to issue a warrant or summons without an information or complaint having been first properly laid before him, and he will be guilty of great misconduct, and liable to an action for false imprisonment, if he issues a warrant without such information: McGuiness v. Dafoe, 2° O.R. 121, 23 A.R. 704.

Waiver.—If, however, the information happens to be defective, or even if there has been no information, it will be waived by the defendant appearing and allowing the proceedings to go on without objection: R. v. Clarke, 20 O.R. 642; R. v. Berry, 8 Cox, C.C. 121; R. v. Simmonds, 8 Cox, C.C. 190; Eggangton v. Pearl, 33 L.T. 428; Paley, 7th ed., 109; R. v. Shaw, 10 Cox, C.C. 66; R. v. Fletcher, L.R. 1 C.C. 320; R. v. Cinque Ports (Jus.), 17 Q.B.D. 191; Peck v. De Rutzen, 46 J.P. 313.

"If the defendant be present at the time of the proceeding, and heard all the evidence, and does not ask for further time to bring forward his defence, this has at all times been deemed sufficient:" R. v. Stone, 1 East, 639, followed in R. v. Bennett, 3 O.R. 45, in which an information for one offence was changed to another in the defendant's presence, and he was held to be rightly convicted of the latter: see also R. v. Smith, L.R. 1 C.C. 110; R. v. Crouch, 35 U.C.R. 433; R. v. Widdup, L.R. 2 C.C. 3; Stoness v. Lake, 40 U.C.R. 320; Dom. Coal Co. v. Kingswall, 30 N.S.R. 397.

Even if the summons or warrant is illegally issued and void, as being issued without any information being laid, or if the defendant appears without any proceedings, wheth voluntarily or under arrest without a warrant (and, it is said, even if the defendant appeared by counsel, only for the purpose of objecting to the insufficiency of the service of the summons: R. v. Doherty, (S.C.N.B.) 3 Can. Cr. Cas. 508), the justice has the right to proceed with the case. The leading case of R. v. Hughes, 4 Q.B.D. 614, establishes that, when a person is before a justice who has jurisdiction over the

subject matter, it is not essential to a valid trial that he should enquire how the defendant came there, but he may proceed to try the case. The only conditions essential to a valid trial are, (1) the presence of the accused, no matter by what means, and (2) the justice's jurisdiction over the offence. The information or warrant are merely means of bringing the accused before the justice, and have nothing to do with the latter's jurisdiction to try the case, and a conviction will be valid, even if the defendant objects. The case of R. v. Hughes has been followed in Re Maltby, 7 Q.B.D. 18; R v. Shaw, 10 Cox, 66; Gray v. Commissioners of Customs, 48 J.P. 343; R. v. Roe, 16 O.R. 3; R. v. Clarke, 20 O.R. 642; R. v. Stone, 23 O.R. 46; Ex p. Sonyer, (S.C.N.B.) 2 Can. Cr. Cas. 121; R. v. Ettinger, 3 Can. Cr. Cas. 387.

But in some cases the particular statute expressly requires an information to be laid as a condition precedent to the justice's jurisdiction: see R. v. Millard, 22 L.J.M.C. 108; and it may be that the proper proceedings to give jurisdiction have not been taken within the time or in the manner required by law; and if, in such case, the defendant distinctly objects on that ground, the justice would have no right to proceed without a properly sworn information and process, and if he does so, the conviction will be quashed: Dixon v. Wells, 25 Q.B.D. 249; R. v. McNutt, 3 Can. Cr. Cas. 184; see also Blake v. Beech, 1 Ex. D. 320; and the conviction will be void if there was no summons and the defendant was not informed of the charge and was not given time to defend, if requested: E. v. Hopkins, 56 J.P. 263.

A defendant cannot be charged and tried for one offence, and convicted of another, even if the evidence shews that he was guilty of the latter; and where a defendant was brought up on an information and process for an indictable offence, and the evidence shewed that he was not guilty of it but was guilty of another offence which the justice could try summarily, and he was thereupon convicted of the latter, the conviction was quashed, the evidence not having been directed to the charge, nor the defendant put upon his defence for it: R. v. Mines, 25 O.R. 577, 1 Can. Cr. Cas. 217; R. v. Lee, 2 Can. Cr. Cas. 233; Miller v. Lea, 2 Can. Cr. Cas. 282.

And a justice has no jurisdiction to take up unexpectedly a charge against a person whom he chances to find in his presence: R. v. Vrooman, 3 Man. R. 509; referred to in 2 Can. Cr. Cas., p. 93.

And he has no jurisdiction to amend by substituting a third party in the summons: Oxford Tram. Co. v. Sankey, 54 J.P. 52, 564.

By ('ode 846, none of the defects there mentioned are valid objections to any information or other proceeding, but if the justice deems it necessary to a fair trial, he is to order further particulars as to the charge, to be furnished to supply such defects.

The principal upon which the justice should act in ordering particulars is, "to give such information as is sufficient to enable the defendant fairly to defend himself; but, on the other hand, not to fetter the prosecutor in the conduct of his case": R. v. Hamilton, 7 C. & P. 448; R. v. Stapylton, 8 Cox, C.C. 69; R. v. Rycroft, 6 Cox, C.C. 76.

On an application for particulars the defendant should furnish an affidavit denying knowledge of the accusation: R. v. Stapylton, supra.

FORM OF AFFIDAVIT FOR PARTICULARS.

Canada. Province of County of

In the matter of an information by A.B. against C.D. for (state the charge).

I, C.D., of the of , in the County of (occ spation), make oath and say:—

1. That I am the above named defendant, C.D., herein.

2. That I am not aware of the name of the person alleged to have been injured (or intended to be injured, or attempted to be injured) by me, as charged in the information herein: (See Code 846 (a)), or,

That I am not aware who is the owner of the property mentioned in the information in this case: (See Code 846 (b)), or,

That I am not aware of the alleged means by which it is claimed that That I am not aware of the alleged means by which it is claimed that the offence charged against me herein was committed: (See Code 846 (c)),

That I am not aware who the person (or what thing) is, referred to as being the subject of the charge against me herein: (Code 846 (d)),

That I am not aware what are the nature and particulars of the alleged offence charged against me herein, and do not possess sufficient information to enable me to meet the said charge.

3. That I am advised, and verily believe that it is necessary, to enable me to defend myself against the charge brought against me, and to a fair trial herein, that further particulars should be furnished by the prosecutor in regard to the said charge: (See R. v. Stapylton, § Cox, C.C. 69.)

Sworn, etc.

Defects in Substance or in Form.— ode 847 provides that ... objection is to be allowed for any lefect, in substance or in form, in an information or process, or for any variations between them and the evidence; nor for any variation as to the time when the offence is stated to have been committed, if the information was in fact laid within the time limited; nor for any variance as to the place where it was committed, if the evidence shews that it was in fact committed within the justice's jurisdiction. But if the variance appears to be such that the defendant was misled, the justice must, on reasonable terms, adjourn the case to some future day: Code 847 (4).

By Code 882, no appeal is to be allowed on any objection to any information or process for any defect in substance or in form, or any variance between them and the evidence, unless (1) the objection was taken before the justice, and (2) it was shewn to the justice that the defendant was deceived or misled; and (3) the justice refused to adjourn the case to some future day. On both the contingencies in (1) and (2) the justice must adjourn the case.

Procedure.—The provisions of ss. 558 et seq. 1 the Criminal Code relating to the issuing and serving of summonses (see ante p. 190) and execution of warrants to apprehend (ante p. 193), and compelling the appearance of the accused and of the witnesses on a preliminary enquiry (ante p. 208), and the taking of evidence on the same (ante p. 225), apply also in a case of summary trial, except as varied by sa. 844 et seq.: Code 843.

And the same ss. 558 et seq., are applied by R.S.O. c. 90, s. 2, to proceedings for offences under Ontario statutes. The forms of information, or complaint, and of summons for defendant, and warrants to arrest, and other forms, are given at the end of the Criminal Code, Folias A. to H. and K. to S. As to search warrants see ante p. 187, and forms in the Criminal Code Amendment Act, 1900.

Corporation.—A corporation may be a defendant in a proceeding for summary conviction: Stacey v. Chilworth, 17 Cox, C.C. 55; R. v. Toronto Ry., 30 O.R. 214: 2 Can. Cr. Cas. 471; over-ruling R. v. Brennan, decided in June, 1892, but not reported; and distinguishing Re Chapman and London, 19 O.R. 33.

Service of a summons on a corporation may be made on the mayor, or chief officer of the corporation, or on its secretary or clerk, in analogy to proceedings under Code 637: R. v. Toronto Ry. Co., supra. And such service is good at common law: Newby v. Colt, L.R. 7 Q.B. 293.

The conviction against a corporation can only be enforced by distress warrant: R. v. Toronto Ry. Co., supres.

The question as to how far and in 'hat cases a corporotion is liable to be charged criminally has been uncertain in view of the various decisions upon the subject, but in the recent case of R. v. Union Colliery Co. (Sup. Ct. B.C.), 3 Can. Cr. Cas. 523, the decision in which has been affirmed by the Supreme Court of Canada (see 37 C.L.J. 159), it has been decided that a corporation, while it cannot be guilty of manslaughter, may be indicted under Code 252 for having caused grievous bodily injury by omitting to maintain, in a safe condition, a bridge, which it was its duty to so maintain, and this, notwithstanding that death ensued at once to the person sustaining the injury. This case adopts the rules formulated by Thesinger, L.J., in Pharmaceutical Society v. London and Prov. Supply Association, 5 Q.B.D. at p. 319, by which to determine whether the term "person" (the equivalent to the term "one" as used in the Criminal Code), liable to be convicted of offences under the Code, includes corporations. These rules are: That the term "person" will include a corporation, (1) if that term is expressly interpreted as including corporations; or (2) if the context of the statute clearly shews that they are included; or (3) if the object and scope of the statute peremptorily require them to be so included and the context does not clearly negative a construction to that effect: see also same case in appeal 5 App. Cas. 869. Upon the subject of the criminal liability of corporations see Chisholm v. Doulton, 22 Q.B D. 741; Somerset v. Wade (1894), 1 Q.B. 574; Bank of N.S.W. v. Piper, 66 L.J.P.C. p. 76; R. v. Birmingham, 3 Q.B. 231; Neville v. Fine Arts Association (1897), A.C. 68; R. v. Great N. of Eng. Ry. Co., 9 Q.B. 314; R. v. United K. E. Tel. Co., 2 B. & S. 647; R. v. London Gas Co., 2 E. & E. 664; Stacey v. Chilworth, 17 Cox, C.C. 58; R. v. Toronto Ry. Cc 30 O.R. 214; R. v. Toronto Ry. Co., 35 C.L.J. 422; R. v. Toronto Ry. Co., 21 C.L.T. 120; R. v. Woodstock Elec. Light Co., 4 Can. Cr. Cas. 107; R. v. Great West Laundry Co., (Q.B. Man.) 3 Can. Cr. Cas. 514: R. v. Tyler (1891), 2 Q.B. 588.

If a warrant to apprehend a defendant is issued in the first instance, or on default of defendant's appearance on a summons for an offence committed in the justice's county. -but it cannot be executed there owing to the defendant having departed elsewhere - it may be "backed" by a justice in another county anywhere in Canada, in the same way as a warrant under Code 565, see ante p. 195; the warrant may then be executed in the county where "backed," and the accused is to be brought before the justice who issued it: Code 844; see p. 196.

In summary proceedings, summonses may be served, and warrants for the arrest of witnesses may be executed, by a constable " or by any other person; " and as well beyond, as in the justice's county: Code 848. This section give extensive powers to a justice, in regard to witnesses on summary trials, than those conferred by ss. 580-584 of the Code, in regard to preliminary inquiries; and authorizes the justice, on summary trials, to summon and, if necessary, cause the arrest of witnesses, not only in the justice's county or province, but anywhere in Canada. The proceedings for procuring the evidence of a witness who is too ill to attend. and of compelling witnesses to attend and give evidence, is the same as in cases of preliminary inquiries: ante p. 208.

Upon a summary trial neither the prosecutor nor the accused can be compelled to attend personally under a summons. It is sufficient if they appear by counsel or attorney: Code 855; Bessell v. Wilson, I E. & B. 488.

If, however, the accused does not appear personally, or by his counsel, the justice may either proceed to hear the case in his absence, or issue a warrant to arrest him: Code 853.

But before doing so the evidence of the constable who served the summons must be taken in the manner directed at p. 192; and it must be shewn to the satisfaction of the justice that the summons was duly served in the manner required by Code 562: (see ante p. 192, and Code 843), a reasonable time before that appointed for the hearing: Code 853. As to what is sufficient proof: see ante p. 192. What is a reasonable time depends upon the circumstances of each particular case.

In R. v. Eli, 10 O.R. 727, the summons was served almost . amediately before the sittings of the court: the justices refused to adjourn, and the court on application to quash

the conviction, held that the proceedings were contrary to natural justice, and in excess of the justice's jurisdiction.

In R. v. Smith, L.R. 10 Q.B. 604, a summons was served on the defendant's wife on 10th March for trial on 1?th March, the defendant being at the time at sea as a fisher:nan, and only returned after the justice had convicted him, and it was held that there was no evidence that the summons had been served a reasonable time under the circumstances, and that therefore, the justice had no jurisdiction to convict the defendant. In this case it was said by Cockburn, C.J., in giving judgment "To convict a person unheard is a dangerous exercise of power, there being the alternative of issuing a warrant to arrest. Justices ought to be very cautious how they proceed in the defendant's absence, unless they have very strong grounds for believing that the summons reached him. If the summons is not served personally the nature of it must be explained to the person with whom it is left." In the absence of the defendant and of the clearest evidence to satisfy the justice, not only that some one was duly served for the defendant, but also of circumstances going to shew that the summons has without doubt reached him, the justice should adopt the alternative course of issuing a warrant to arrest: see R. v. Mabee, 17 O.R. 194; Ex p. Donovan, 3 Can. Cr. Cas. 286. In R. v. McAuley, 14 O.R. 643, it was held that service on the defendant's wife, and a conviction in his absence, and without the summons having been shewn to have come to the knowledge of the defendant, were under the particular circumstances of the case, valid; and see R. v. Cambridgeshire (Jus.), 44 J.P. 168; Culverson v. Melton, 4 P. & D. 445; 12 Ad. & E. 753; Ex p. Hopwood, 19 L.J.M.C. 197, in which a summons was served in the afternoon, returnable next morning. When defendant's solicitor appeared and asked an adjournment, which was refused, and the solicitor then said he had no alternative but to submit to a conviction: the justice then proceeded to hear the case, and the conviction was sustained.

In proceeding in the absence of defendant, the justice can only deal with the case as laid in the information and summons, and no material amendment or change can be made in them, or at least, not such as in any way alters the character of the charge: I \ p. Doherty, 1 Can. Cr. Cas. 84. And, in such case, the justice must take the evidence and proceed with the same formality as if the defendant appeared, and cannot con-

vict without sufficient evidence. The defendant does not confess the offence by his default: Paley, 6th ed., 103.

If the defendant does not appear, the justice may, upon proof of the service of the summons, issue a warrant for his arrest, and adjourn the case: Code 853. The proceedings and forms will be similar to those described at p. 192.

If the defendant appears, but the prosecutor after having due notice does not, the justice may dismiss the case with or without costs: Code 854 and 857 (3): or may adjourn the hearing to some other day: Code 857 (1); or proceed then and there to hear the case, as if both parties had attended, Code 854 and 857 (2). As to notice to prosecutor, see Paley: 6th ed., 99.

FORM OF NOTICE TO PROSECUTOR.

In the matter of an information laid by A.B. against C.D. for that (state the charge).

You, the above named prosecutor A.B., are hereby required to take notice that the hearing of the case above mentioned, before the undersigned, will take place at county of , at the hour of , at the hour of , on the day

Dated this day of , A.D. 19 .

Justice of the Peace, County of

Notice is required by Code 854 to be given to the prosecutor, and should be in writing. It must be a notice given, and duly proved to have been given, in due time and manner and form, before proceeding in the complainant's absence, under this section of the Criminal Code. As to the meaning of the word "due," see Gibson v. People, 5 Hun. 543; Anderson's Dict., 385.

If the prosecutor does not appear, not desiring to proceed with the case, the justices may nevertheless proceed with it as if he were present; and if the prosecutor is a necessary witness the case may be adjourned and the prosecutor summoned and compelled to attend by the same processes as an ordinary witness would be: Ex p. Bryant, 27 J.P. 277. As to allowing cases to be compromised see *infra*.

If neither of the parties appear, the justice may proceed as if they were both present: Code 857 (2); Paley, 6th ed., 107, and may hear the evidence, if any is offered, and either dismiss the case, with or without costs, or convict the defendant and award punishment, proceeding with the same formality as if both parties were in attendance.

If both parties appear, either personally or by counsel, the justice is to proceed to hear the case: Code 855.

If the accused appears to be under sixteen years old, the case is to be dealt with differently from one against an older offender: see "Juvenile Offenders."

At the hearing of the case the justice is, in the first place, to state to the defendant or his counsel the substance of the charge: and the defendant is to be then asked if he has any cause to shew why he should not be convicted, or why the order asked for against him should not be made, as the case may be: Code 856.

If the defendant, by himself or his counsel, admits the charge, and shews no sufficient cause against conviction, the justice may convict or make the order: Code 856 (2). The defendant may plead guilty through his counsel in his absence; but if counsel, who really has no authority to do so, pleads guilty on the defendant's behalf, the conviction is invalid: R. v. Aves, 24 L.T. 64.

If the defendant does not admit the truth of the charge, the justice is required to proceed to take the evidence on behalf of the prosecutor and the defendant, in the same manner as in the case of taking evidence on a preliminary inquiry: Code 856 (3). The proceedings and forms in procuring the attendance and taking the examination of witnesses and taking evidence are to be the same as in preliminary inquiries under Code 590, as described, ante p. 204.

The hearing on a summary trial is to be an "open and public court," and the general public have a right to be present, so far as the place can conveniently contain them: Code 849. Subject, however, to the powers conferred on justices to preserve order by excluding anyone improperly behaving himself: Code 908. As to the powers of magistrates and justices in preserving order in court see p. 176.

Exclusion of Public.—By the Dominion Statute of 1900, c. 46, new s. 550 (a), the justice is empowered to order that the public be excluded in any case in which the justice is of opinion that the same will be in the interests of public morals. The justice may, at the request of either party, order witnesses out of court, as in preliminary inquiries: see p. 179.

Right of Defendant to Counsel.—The defendant must be admitted to make his full answer and defence, and to have the tallest opportunity to examine and cross-examine the witnesses by his counsel: Code 850.

By s. 2 of Code 850, the right of both parties to have the case conducted by their counsel is expressly given; but, although it is both proper and usual to give reasonable delay for the parties to procure counsel, the justice is not bound to adjourn the case for that purpose: R. v. Biggins, 5 L.T. 605; R. v. Cambridgeshire, 44 J.P. 168.

Both parties are entitled to have the fullest latitude in cross-examination, within the usual rules of law in that regard: see "Evidence," supra, as to the scope of such cross-examination.

Cross-Examination of Prosecutor.—A prosecutor who is a witness is not bound to disclose on cross-examination the source of his information on which he laid the charge: for his answer does not tend either to prove or disprove the charge, and is irrelevant: R. v. Sproule, 14 O.R. 375.

He is bound, however, to answer questions touching the alleged disqualification of the justice by reason of interest in the subject matter, or bias; and the justice himself may be called as a witness, and is bound to answer questions upon this or any other relevant point in the case: R. v. Sproule, supra.

As to the position of the justice in this regard, and as to his assuming his seat on the bench after giving evidence, see ante "Interested Justice."

Witnesses for Defence.—Natural justice, as well as express law, requires that all witnesses should be examined for the defence, as well as for the prosecution, and even in the absence of any provision, such witnesses are admissible, and must be heard: Re Holland, 37 U.C.R. 214; R. v. Washington, 46 U.C.R. 221; R. v. Grant, 18 O.R. 169.

A refusal to hear a witness for the defence will invalidate the conviction: R. v. Sproul, supra.

But the defendant is not to be deemed to have been denied his right to make his full answer and defence, merely by reason of the justice having stated, after hearing the evidence for the prosecution, that the denial on oath by the defendant, of the facts already in evidence, would not alter

his opinion of the defendant's guilt: R. v. MacGregor, 2 Can. Cr. Cas. 410.

Taking Down the Evidence.—The evidence is to be taken down in writing by the justice, or someone in his presence, and appointed by him; and it must be taken in the presence of both parties: Code 590 (2); Denault v. Robida, Q.R. 10 S.C. 199.

The evidence need not be signed by the witness: Code 856 (3); and see Ex p. Doherty, 3 Can. Cr. Cas. 310 (N.B.); but it should be signed by the justice, as in preliminary inquiries; but this is merely directory, and if not done, its omission will not affect the conviction: Ex p. Danaher, 27 N.B.R. 554.

If, however, the depositions are signed by the justice, they may be used on an appeal to the sessions, if the witness is then dead, or out of the country, or too ill to attend: see ante, "Appeals." And they may be referred to on a motion to quash the conviction, if properly taken: Code 889; R. v. MacGregor, 2 Can. Cr. Cas. 410.

The evidence should be taken down fully and carefully, as in preliminary inquiries: sc3 as to this, ante p. 228. Section 851 of the Code requires the evidence to be taken on oath or affirmation. The expression "oath" includes "affirmation:" R.S.C. c. 1, s. 7 (2); R.S.O. c. 1, s. 8 (18): see Canada Evidence Act, 1893, c. 31, s. 23.

After the evidence for the prosecution and defence has been taken, the prosecutor has generally the right to give evidence "in reply;" but he has not that right if the defendant has not adduced any evidence in defence, except as to his previous good character: Code 856 (3).

Adjournment.—At any time before or during the hearing the justice may adjourn the case to a time and place to be fixed and stated in the presence and hearing of the parties (or their solicitor or agent: Proctor v. Parker, 12 Man. R. 528), or in the absence of either, on their failure to attend: but no adjournment can be made for more than eight days at any stage of the proceedings, except when the justice adjourns to consider his judgment: Code 857; or except by consent; but if the defendant consents, he cannot afterwards object to a longer adjournment: R. v. Heffernan, 13 O.R. p. 626; R. v. Hazen, 20 A.R. 633, which over-rules R. v. French, 13 O.R. 80; and if the defendant appears on the adjourned

hearing he cannot object; but if he did not consent to an adjournment for more than eight days, and does not appear on the adjourned hearing, the proceedings will fall to the ground; Ib.

The adjournments will be assumed to have been regular unless proved otherwise: Proctor v. Parker, 3 Can. Cr. Cas. 374.

The adjournment on a summary trial, provided for by Code 857, is not for eight clear days; and in this respect differs from that in preliminary inquiries, under Code 586; which may be for eight clear days: see p. 206. There will be one day's difference. Eight days would be, say, from the 1st to the 9th of the month; while eight clear days would be from the 1st to the 10th: Radcliffe v. Bartholomew (1892), 1 Q.B. 161; Re Sams and Toronto, 9 U.C.R. 181.

The time and place to which the case is adjourned must be announced to the parties at the time.

Habeas corpus will not be granted to discharge a defendant from custody on the ground of unreasonable adjournment and remands: R. v. Cox, 16 O.R. 228.

Adjournments should be for good and sufficient reasons; a justice has no authority to direct a prisoner to be sent back to prison merely to suit the justice's convenience; and he will be liable in trespass for so doing. He must either proceed with the case himself, or direct the accused to be taken before another justice: Grey v. Customs Commissioners, 48 J.P. 343.

It is no objection to a conviction which is required to be heard before two justices (in which case Code 842 (6) says, that both justices must be present acting together during the who' of the hearing and determination of the case), that during the proceedings a remand has been made by only one of them: R. v. Menary, 19 O.R. 691.

The justice on adjourning the case may remand the accused to gaol, or may take a recognizance of bail with or without sureties: Code 857 (4); see p. 206, as to remands and recognizances, and forms of same. Code 878, as amended by the Act of 1895, provides the proceedings to be taken to estreat the recognizance on defendant's non-appearance on remand.

At the conclusion of the evidence the justice must hear what each party or their counsel or solicitor has to say: Code 858.

After considering the whole matter the justice is to proceed to determine the same and either dismiss the case or else convict or make the order against the defendant: Code 858. If a justice or magistrate tries more than one charge against the defendant on the same occasion he must adjudicate upon the one first heard before proceeding with another, and cannot reserve it till he has heard the other case or cases: R. v. McBerney, 29 N.S.R. 327; R. v. Evans, 62 L.T. 570.

The justice may adjourn the matter to consider his judgment: Code 857; but must in the presence and hearing of both parties, or their counsel, fix a time and place to announce his adjudication. He cannot adjourn the case sine die, and then give judgment in the absence of any of the parties, without previous notice to them; and if he does so the conviction will be invalid: Therrien v. McEachren, 4 Rev de Jur. 87. The parties have the right to be present, in order to protect their interests: R. v. Hall, 12 P.R. 142; R. v. Morse, 11 C.L.T. 342; R. v. Mitchell, 17 C.L.T. 352. But if at the time and place fixed they do not attend, he may adjudicate in their absence: R. v. Quinn, 28 O.R. 224.

The adjournment to consider the judgment may be for more than eight days at one time, if the justice sees fit, differing in that respect from an adjournment during the progress of the case: R. v. Hall, 12 P.R. 142; R. v. Alexander, 17 O.R. 458; R. v. French, 13 O.R. 80, distinguished.

Adjudication.—The justice must not only announce his adjudication, but must nake a memorandum of it on the proceedings, before leaving the bench. The formal record of conviction, or order of dismissal, may be drawn up at any time afterward: Code 859. But if, instead of making a memorandum of adjudication, the justice then and there fills out and signs the formal conviction, or order, the latter sufficiently takes its place, and the memorandum need not be made: Ex. p. Flannagan, 2 Can. Cr. Cas. 513.

The defendant may waive the objection that the adjudication was not announced in open court: Chase v. Sing, 6 B.C.R. 454.

A justice cannot, after adjourning a case for the sole purpose of considering his judgment, amend the information in the absence of the defendant at the time and place appointed to give judgment; and a conviction on such amended information will be quashed: R. v. Gough, 22 N.S.R. 516; R. v. Grant, 30 N.S.R. 368.

A copy of the memorandum of adjudication, or if none, then of the conviction, is required to be at once served on the defendant (if convicted), before any warrant of distress or con nitment is issued: Code 863. The omission to do so, however, will not invalidate the subsequent proceedings, it being a matter of procedure merely. The memorandum of adjudication should be made out carefully, as it is the foundation for the subsequent proceedings. As to the requisites of it, see R. v. Perley, 25 N.B.R. 43.

It should contain the finding of guilt or otherwise, and of conviction or acquittal, and must adjudge the penalty, and the proceedings to enforce the same should be stated.

If two justices are required to hear and determine the case, both must sign the adjudication, and afterwards the formal conviction. The conviction must be under the justice's hand and seal: Code 859; but need not be made out before issuing warrants of distress or commitment, which are sufficiently based on the adjudication alone: R. v. McCarthy, 11 O.R. 657; Lindsay v. Leigh, 11 Q.B. 454; Ratt v. Parkinson, 20 L.J.M.C. 208; Paley, 6th ed. 314.

If two or more justices hear the case, the decision of the majority governs; but if the bench is equally divided, there is no decision, and another information must be laid: Kunis v. Graves, 67 L.T. (Q.B.) 583; but the proper course is to adjourn the matter before another bench of justices.

Forms of convictions are given in the Criminal Code, V.V. to A.A.A.; and Form of order of dismissal, B.B.B.

A dismissal is a decision upon the subject matter between the same parties by a competent tribunal, and another justice cannot again hear the matter, as it is res adjudicata: R. v. Ashplant, 52 J.P. 474; Ex. p. Evans, 63 L.J.M.C. 81; R. v. Monmouthshire (Jus.), 4 B. & C. 844.

Costs.—The provisions of the Code empowering justices to award costs in proceedings under Dominion laws are:—

- (1) Code 857 and 868, against the prosecutor on dismissal of the case.
 - (2) Code 867, against the defendant on conviction.

These sections only apply to proceedings under Dominion laws, and R.S.O. c. 90, s. 4, provides for costs in cases under Ontario laws, including prosecutions under the Ontario Municipal Act and Municipal By-laws: s. 5.

The tariff of costs for justices, constables and witnesses, in prosecution under Dominion laws, is contained in Code 871, as amended by the Dom. Stat. of 1894, c. 57.

The Ontario tariff is provided by R.S.O. c. 95. As to justices' fees, s. 1, and witness fees, s. 4, and by R.S.O. c. 101, p. 1046, as to constables' fees, in prosecutions under Ontario

As these tariffs differ, care must be taken, in fixing the amount of costs, to apply the right tariff. The Dominion tariff does not apply to cases under Ontario laws, and vice versa: R. v. Excell, 20 O.R. 633.

The constable's fee under the Ontario tariff for attending on the trial, is \$1.50 per day in one or more cases; while, under the Dominion tariff, it is \$1 each day, if the trials for the day do not last longer than four hours, and for more than four hours \$1.50 for the day. No matter how many cases are tried, only one fee can be charged, which should be apportioned in awarding the costs in the several cases tried. A justice is entitled, under either tariff, to 50 cents for the trial of a case, or \$1 if it lasts more than four hours. If there should be several cases, the justice's fee will be charged in each. A fee of 50 cents is allowed to the justice for making out the formal conviction or order, in Ontario as well as in Dominion cases: R. v. Excell, 20 O.R. p. 637.

No costs except those set out in the tariff can be ordered; and a conviction containing an order for payment of costs, including \$1 for the use of the hall where the trial took place, is invalid and will be quashed, the court not having power in such case to amend the conviction, as that would thereby create a variance between the adjudication and the conviction, coming within the decision in R. v. Walsh, 2 O.R. 211, and the court having no power to interfere with the justice's adjudication: R. v. Elliott, 12 O.R. 524. But see ante "Certiorari" as to powers of the court under Code 889.

By R.S.O. c. 95, it is declared that the provisions of that statute shall not authorize any claim being made, by a justice, for fees in cases above the degree of a "misdemeanor." The justice has authority, however, to order payment of costs in all prosecutions against Ontario laws, and is not authorized to order any costs to be paid in cases of preliminary inquiries in indictable offences. The payment of costs awarded in summary trials may be enforced in the following manner.

In cases under Dominion law, if the prosecution is dismissed, and if, in accordance with the power given by Code 868, the justice orders the costs to be paid by the prosecutor, the payment may be enforced by distress warrant; or if that is to be omitted, under the circumstances stated in Code 875, or if the constable returns the distress warrant no goods, then a warrant of commitment for not more than one month, may be issued, unless the costs are sooner paid: Code 873, 869.

The forms of warrant of distress, K.K.K., and of commitment, L.L.L., are given in the schedule to the Criminal Code. The proceedings for issuing and enforcing these warrants is stated infra.

If the defendant is convicted, or an order is made against him, with costs, such costs are recoverable in the same manner, and under the same warrants, as the penalty, as to which see p. 272: Code 869.

But if there is no penalty awarded, the costs may be recovered by warrant of distress against the defendant's goods; or if that is omitted, or there are not sufficient goods, then by warrant of commitment for not more than one month: Code 870.

No forms of these warrants have been provided by the Criminal Code, but the Forms E.E.E. and F.F.F. to be found at the end of the Criminal Code may be adapted.

Recovering Costs of Dismissal or when no Penalty Imposed.—In prosecutions under Ontario laws the mode of enforcing payment of costs differs from the above, and is provided by R.S.O., c. 90, s. 4, s.-ss. 3, 4 and 5, viz.:

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When no penalty is imposed, or the case is dismissed, the costs are recoverable only by distress warrant against the goods of the party ordered to pay: s. 4 (4).

This provision is inconsistent with that contained in the immediately preceding s.-s. (3) of the same Act, which directs that, on dismissal, the costs may be recovered in the same manner as a penalty, including the costs of conveying the prosecutor to prison. Sub-section (4) is a codification of the law as amended by the Ontario Statute 60 Vict., c. 15, Schedule A. (22); it is a later enactment than s.-s. (3), which is carried forward from R.S.O. 1887, c. 74, s. 2 (3). Under s.-s. (4), which is of more recent origin, the costs ordered to be paid by the prosecutor, on dismissal, are recovered by warrant of distress only; and it is submitted that the effect of the con-

tradictory clauses is, that there is no authority to issue a warrant of commitment, notwithstanding it is so provided in M.-S (3), which, undoubtedly by an oversight, was not amended in that respect.

"The law which is later in date, as well as later in position in the statute book, must, in case of inconsistency or repugnancy, prevail against the earlier in time and place": per Boyd, C., in R. v. Rose, 27 O.R. 195: see also Robinson v. Emerson, 4 H. & C. 352; Attorney-General v. Lockwood, 9 M. & W. p. 391; Parry v. Croydon, 11 C.B.N.S. 579: 15 C.B.N.S. 568; Mitchell v. Brown, 1 E. & E. 267.

The form of the distress warrant K.K.K. given in the Schedule to the Criminal Code may be used to recover these costs.

If a justice fixes an excessive amount of costs, it is not a ground of appeal, nor for quashing a conviction, as taxing costs is a ministerial act: R. v. Brown, 16 O.R. 41; Ex p. Howard, 32 N.B.R. 237; Ex p. Rayworth, 2 Can. Cr. Cas. 230.

But an order for payment of costs which the justice has no authority to award will invalidate the conviction: Ex p. Lon Kai Long, 1 Can. Cr. Cas. 120; such as an order for payment of the costs of conveying the party to gaol, where the imposition of such costs is not provided for, by the particular statute relating to the offence.

If a justice takes excessive costs by mistake, he may be cempelled to refund; but if he does so dishonestly, he may be prosecuted criminally: Ex p. Howard, 32 N.B.R. 237; and an action will lie for \$89 penalty against him for wilfully receiving excessive costs: R.S.O. c. 95, s. 3.

The costs awarded against a defendant on conviction must be ordered to be paid to the informant and not to the justice. otherwise the conviction will be invalid; R. v. Roche, 32 O.R. 20.

Memorandum of Adjudication.—If the justice, upon hearing the case on the merits, finds the defendant not guilty, he must not only make out a memorandum of adjudication, but also, if required by the defendant, an order dismissing the information: Code 858; the order is to be in the Form B.B.B. to the Criminal Code: see Code 862; and he must also give the defendant a certificate of such dismissal, in the Form C.C.C. to the Criminal Code: see "Res Adjudicata."

Being the judgment in the case, the memorandum or minute of adjudication upon a conviction must use apt formal words, and "adjudicate the forfeiture" of the penal. A conviction which merely "orders" the defendant to "pay" was held bad: R. v. Cyr., 7 C.L.T. 117; R. v. Crowell, 2 Can. Cr. Cas. 34; R. v. Burtress (S.C.N.S.), 3 Can. Cr. Cas. 536.

Punishment can only be awarded after the accused has been lawfully convicted of some offence against the law: Code 931; and the punishment must be in accordance with the direction in the statute, by which it is prescribed: Code 930; and it must be subject to the limitation contained in the enactment as to its degree: Code 932. Within such limitations, the punishment is in the discretion of the convicting justice: Code 932, 934.

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But a justice has no authority to decline to inflict the punishment which the law awards, within the limits of his discretionary power; nor to award any shorter term of imprisonment than the minimum, if any, prescribed by the law for the offence: Code 953.

In certain cases, however, the justice is authorized by Code 861—and only in the cases there mentioned—to discharge the offender from the conviction, upon satisfaction being made to the party aggrieved, for damages and costs (or either) to be ascertained by the justice. The costs, in such event, may include any cost which the party aggrieved may have properly and necessarily incurred for counsel and witnesses, besides his own expenses, and the justice's and constable's fees.

The justice can only discharge the offender, under Code 861, if it appears to be the first conviction against him, and if the offence is one of those provided for by parts 22-30, inclusive, or under part 37 of the Code.

Some of these offences are indictable only, and not within a justice's summary jurisdiction; Code 861 can only apply to such as are within his summary jurisdiction.

By Code 865 the justice may dismiss the case if he finds the offence so triding as not to merit any punishment; and by Code 971, as amended by the Act of 1900, c. 46, "the court" (which by Code 974 is defined by reference to Code 872 and 809 to include a judge of sessions or a police, district or stipendiary magistrate) is given authority upon convicting an offender of any offence punishable with not more than two

also if it appears that, having regard to the age, character and antecedents of the accused, or of the trivial nature of the offence, and to any extenuating circumstances, it is expedient that the offender should be released on probation of good conduct, to order that he may (instead of being at once punished) be released, on entering into a recognizance, with or without sureties, and for a fixed period, as the magistrate directs, to appear and receive judgment when called on, and meantime to keep the peace and be of good behaviour: see infinite as to the forms and proceedings for binding party over to keep the peace.

When the offence is punishable with more than two years' imprisonment, a judge or magistrate making a conviction has the like powers, but only with the concurrence of the counsel acting for the Crown: Code 971 (2). The judge or magistrate has also the power, if he thinks fit, to direct that, in either of such cases, the offender shall pay the costs of the prosecution, or some portion of them, within such period and by such instalments as the judge or magistrate directs.

The offender can only be released under Code 971, if the judge or magistrate is satisfied that the offender has a fixed place of abode or regular occupation in the county or place where he is likely to live during the period of probation: Code 972. If, at any time after the accused has been released on probation, an information is laid on oath before any justice of the peace, stating that the offender has failed to observe the conditions of his recognizance, the justice may issue a warrant for his arrest: Code 973.

The offender upon being arrested may be brought before any justice for the territorial jurisdiction in which he was originally convicted, and the justice may either remand him to gaol until the time when he was to appear for judgment in the original prosecution, or may admit him to bail with a sufficient surety to appear before the judge or mag strate for judgment on the original conviction: Code 798 (3).

The offender may be so remanded to the prison, either for the county in which the justice who issued the warrant has jurisdiction, or for that in which the offender is bound to appear for judgment, and the warrant of remand is to order that he be brought before the judge or magistrate before whom he was bound to appear for sentence, or to answer for his conduct since his release: Code 973 (3). If punishment is awarded by a justice, it must be in strict accordance with that provided by the statute. So if the statute directs imprisonment for three months, a conviction awarding ninety days is bad, for that period may be more than three months: R. v. Gavin, I Can. Cr. Cas. 59.

A month means a calendar month: R.S.C. c. 1, s. 7 (25); R.S.O. c. 1, s. 8 (15).

If the statute provides punishment by both fine and imprisonment, the justice may award both, or either of them: R. v. Robideaux, 2 Can. Cr. Cas. 19.

If an offence is punishable under more than one statute, or rection of the same statute, the defendant may be tried and punished under either or any of them: Code 933,

If the particular statute relating to the offence does not provide the punishment, then it is to be by fine not exceeding \$50.00, or imprisonment with or without hard labour for not more than six months, or both: Code 951 (2); and costs may be added, either to fine or imprisonment, or both, although not specially provided: Code 867.

Any number of defendants may be joined in one information and conviction for an offence in which they are jointly engaged. "Where the offence is in its nature single and cannot be severed, then the penalty shall only be single; because though several persons may join in the commission of it, it still constitutes but one offence. But where the offence is in its nature several, and where every person concerned may be separately guilty of it, then each offender is separately liable to the whole penalty; because the crime of each is distinct from the offences of the others, and each is punishable for his own crime": Lord Mansfield, C.J., in R. v. Clarke, Cowp. 610. It is improper to join two persons in one proceeding if the offence charged against one of them has nothing to do with the offence charged against the other: R. v. Hagerman, 31 O.R. p. 637. It is otherwise if the offence is several: R. v. Littlechild, L.R. 6 Q.B. 293; in which several persons were charged with using a gun on Sunday, and each was held liable for the full penalty. The same case also decided that it was in the discretion of the justices to join all the defendants in one information and to try the cases together or separately, and make out separate convictions. See also Ex p. Beggins, 26 J.P. 244; Atty.-Gen. v. McLean, 1 H. & C. 750.

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An assault by two persons upon the same party may be charged and punished as separate offences: Re Brighton

(Mag.), 9 T.L.R. 522.

Unless the offence is a joint one, if two or more persons are joined in the one proceeding, separate convictions should be made out, and each defendant must only be made liable for his own fine and costs, and distress or commitment must be only for the amount for which he alone is in default: Morgan v. Brown, 4 A. & E. 515; R. v. Cridland, 7 E. & B. 853.

Compensation.—In addition to fine or imprisonment for the offence itself, or instead of them, there is authority, in cases where the statute relating to the offence so provides, to award, upon conviction, damages or compensation for the injury done to the prosecutor, and the justice, in the minute of adjudication and conviction, is to award and fix the amount and how the payment is to be enforced.

When Fine to be Paid.—The fine (and damages, if any, and costs) may be ordered to be paid forthwith, or time may be given: Code 872 (a). No time need be stated, and in that event it is payable forthwith: R. v. Caister, 30 U.C.R. 247. Under R.S.O. c. 90, s. 13 (1), which applies only to cases under Ontario laws, the conviction is not invalid if time is given for the payment of the amount or for part of it, or if security is taken, or if part is paid and part not paid, but an order for payment by instalments is prohibited: s.-s. 2 (2).

There is no similar provision made in the Criminal Code.

If part of the money is paid in any case, whether under a Dominion or Ontario law, it must be returned to the defendant, before a warrant of commitment can be issued: Sinden v. Brown, 17 A.R. 173.

Under certain statutes, however, such as the Indian Act, R.S.C. c. 43, s. 26 (2), power is given to commit after part payment: Arnott v. Bradley, 23 C.P. 1; R. v. Barton, 13 Q.B. 389.

How Penalty Enforced.—In awarding the measures to be taken to enforce payment of the penalty inflicted upon conviction, including compensation, if any, and costs, the justice may either apply those which may be specially provided by the statute or clause relating to the offence, or he may (whether such statute or clause does or does not provide such measures), adopt those contained in Code 872 (a) or (b), as

amended by the Dominion statute 1900, c. 46, and ss. 874 to 878 of the Criminal Code.

These provisions are also made applicable to prosecutions under Ontario laws by R.S.O. c. 90, s. 2 (3).

The first proceeding to be awarded for default of payment is a distress warrant. The justice should not award distress, however, if he finds that it would be ruinous to the defendant or his family, or if the defendant acknowledges, or it otherwise appears that he has not sufficient seizable goods to make the money: Code 875. In that event the justice may order that on default of payment the defendant be committed to gaol, omitting proceedings by distress: Code 872 (b), and it has been held that under this section of the Code distress may be dispensed with, even without the reason mentioned in Code 875 being expressly shewn: Ex p. Casson, 2 Can. Cr. Cas. 483.

And the statement in the conviction that it appeared there were not sufficient goods to realize the money by distress cannot be controverted: Mechiam v. Horne, 20 O.R. 267.

If the justice directs proceedings by distress, he should further award that if there is no sufficient distress found, the defendant be committed to gaol. The period of imprisonment to be ordered for default of payment must be that mentioned in the statute relating to the offence, or if not so mentioned, or if the means of enforcing payment is not provided at all in such statute, the order is to be for commitment for not more than three months, unless payment of the penalty and compensation, if any, including costs of commitment and conveying the defendant to gaol, is sooner made: Code 872 (a), (b).

Such imprisonment may be ordered to be with or without hard labour, in the discretion of the convicting justice, the Criminal Code Amendment Act, 1900, providing that even if the particular statute, authorizing a conviction or order, does not provide that the imprisonment on default of payment is to be with hard labour, yet if it does provide that imprisonment with hard labour may be ordered in the first instance as punishment for the offence, then the imprisonment in default of payment may also be with hard labour.

In his award of imprisonment, whether as a punishment or in default of payment of a fine and costs, the justice may, by the adjudication, make the following directions:

1. If the offender is already in gaol, undergoing punishment for another offence, the justice may order that the imprisonment for the subsequent offence shall commence at the expiration of the imprisonment then being undergone: Code 877.

2. If the defendant is convicted before the same justice of more than one offence at the same sittings, the justice may award that the sentences shall take effect one after the other: Code 954. There is no presumption of law that sentences are to run concurrently in prosecutions under Dominion laws: Ex p. Bishop, 1 Can. Cr. Cas. 118, at p. 119; but the justice may order that the periods of imprisonment he imposes shall run concurrently.

The justice may also, in accordance with s. (3) of Code 872, direct that the imprisonment awarded on default of payment of damages or compensation shall commence at the expiration of any imprisonment awarded for default of payment of the fine. If a fine, and also damages, are awarded, there should be separate awards of imprisonment for default of payment of each, and it should also be stated

whether they are to run concurrently or not.

In case the law provides for a money penalty or imprisonment (or both) as punishment, and the justice awards both, and also awards imprisonment in default of payment of the penalty, the justice may order that the imprisonment for default of payment shall commence after the expiry of the term of imprisonment awarded as punishment: Code 872 (3).

When Imprisonment Begins.—As to the time when the imprisonment is to begin, there is no express provision in the Criminal Code, but the form (F.F.F. given in the schedule to the Criminal Code) requires the gaoler to detain the person convicted in prison for the time awarded by the magistrate, without reference to an interval occurring between the arrest and commitment under the warrant, during which interval he is in the custody of the constable, and therefore constructively in prison: see 6 Ency. of the Laws of Eng. 326; 2 Hawkins, P.C. c. 18, s. 4; Bird v. Jones, 7 Q.B. 742.

It was held in R. v. Scott, 2 C.L.J. 323, and R. v. Crow, 1 C.L.J. 302, that when the imprisonment was to count from the time of the delivery by the constable of the defendant in gaol, the period of imprisonment thus depending on the will of the constable, who was to deliver him to the gaoler, was

uncertain, and the defendant was discharged: see also Ex p. Foulkes, 15 M. & W. 612; Braham v. Joyce, 4 Exch. 487; Bowdler's case, 12 Q.B. 612; Henderson v. Preston, 21 Q.B.D. 362. It seems to be a question whether the warrant given in the statute is adequate in view of the above decisions in cases in the Canada Law Journal. The provisions of Code 955 (7) do not seem to apply to convictions by justices or magistrates. I however, the form of warrant given in the Criminal Code has the effect of legislation, with regard to the time when the imprisonment is to begin, it would seem that the imprisonment would properly be computed from the time the prisoner is actually lodged in gaol, without regard to the interval occurring between the arrest and commitment: see also article in 52 J.P. 419.

When Imprisonment Ends.— The sentence of "one calendar month's" imprisonment expires on the day preceding the day which corresponds numerically in the next succeeding month with that on which the imprisonment begins. If there is no such corresponding day in the next month, it will expire on the last day of that month: Migotti v. Colvill, 4 C.P.D 233.

A gaoler acting in obedience to a warrant valid on its face, is protected if he does not detain the prisoner longer than the period mentioned therein, although he may have been in custody prior to the day of his delivery to the gaoler: Henderson v. Preston, 21 Q.B.D. 362.

Sureties to Keep the Peace.—In addition to any punishment awarded, the justice may, if the offence is one against the public peace (such as riot or assault), and the accused, by reason of turbulent disposition displayed, or if it appears from the circumstances that he is likely to repeat the same or some other offence, the justice may instead of or in addition to any other punishment awarded, require the defendant forthwith to give security in his own recognizance with or without one or more sureties, and in such amount as the justice may think reasonable, to keep the peace and be of good behaviour for any term not exceeding twelve months: Code 959, amended by 56 Vict., c. 32. The form of recognizance is given in the schedule to the Criminal Code, Form X.X.X., and the provisions as to sureties to keep the peace are given in Code 959, 960: see also infra, "Articles of the Peace."

In default of the defendant giving auch recognizance he may be committed for not more than twelve months: Code 959: Form of warrant Y.Y.Y. to the Criminal Code with necessary variation: Code 959 (5).

Enforcing Penalties.—If the fine and costs awarded upon a conviction, with damages if any, are not paid at the time fixed by the adjudication, the subsequent proceedings to enforce it (if not provided by the statute relating to the offence) are provided by Code 872, s.-ss. 2 and 4, as amended by the statute of 1900, c. 46. And even if the particular statute provides for the manner of enforcing payment, the provisions of Code 872 may be followed instead: see that section.

Forms of Warrants.—The forms of warrants of distress and commitment are provided for in Code 872, s.-s. 2, as amended by the Act of 1900, c. 46. Form D.D.D. in the schedule to the Criminal Code is the warrant of distress to be used in the case of conviction for a penalty.

Form E.E.E. of distress warrant is to be used in the case of an order upon a complaint for non-payment of a money demand. Form J.J.J. is a warrant of commitment upon return by the constable of no goods to either of the above distress warrants: see Form I.I.I. of return of no goods. Form F.F.F. is a warrant of commitment upon a conviction for a penalty when no distress is ordered. Form G.G.G. is a like warrant of commitment on an order for payment of a money demand when no distress is ordered.

A warrant of commitment which does not fix the amount of the costs of the commitment and conveying the prisoner to gaol, when such costs have been ordered, is bad, and will be set aside: R. v. Bright, 1 C.L.J. 240.

Warrants—By Whom Issued.—Section 872 (2) of the Code provides that these warrants may be issued by the justice who made the conviction, or order; but by Code 842, sub.-ss. 4 and 5, it is provided that they may also be issued, and all other proceedings subsequent to the conviction may be taken, by any other justice having jurisdiction; and that one justice may issue the proceedings subsequent to the conviction, even if two justices are required to take the prior proceedings and hear the case. If a justice refuses to issue the warrants to enforce the conviction, he may be compelled

by mandamus to do so: Paley, 6th ed. 314, and see chapter on "Mandamus," ante p. 61.

Where Goods Jut of County.—If a distress warrant is issued, and the constable cannot find sufficient goods of the defendant in the county, the warrant may be "backed" in the manner provided by Code 565 and 844 for backing other warrants: see ante p. 195 for proceedings and forms. The warrant may then be executed by a constable of either the county in which it was issued or of that in which it was so backed: Code 874.

Exemptions.—The Ontario exemption law only applies to exempt goods from seizure under process from Unturio courts, and there are no exemptions from seizure under a distress warrant; but the justice is not to issue a distress warrant if it appears that it would be ruinous to the defendant's family, or that he has no goods: Code 875. It appears that the defendant should be heard upon the question whether he has sufficient goods to satisfy by a distress before his commitment is ordered: Re Clew, 8 Q.B.D. 511. So if the only goods seizable are the defendant's household goods, necessary for his family's use, and his implements of trade, they should not be taken. On a distress warrant being issued, the defendant may either be allowed to go at large on his own recognizance, or with sufficient sureties, pending its enforcement, or he may, by verbal or written order, be remanded to the constable's charge, or to gaol, until the constable can make his return; or the defendant may deposit any property as security, to the justice's satisfaction, and be allowed to go at large: Code 876.

Seizure and Sale of Goods.—There is no prezision made by any Dominion or Ontario statute as to the proceedings to sell the goods seized; but in analogy to se'es under distress for rent, notices of the sale should be put—p for eight days, and a notice of it should be also given to the defendant: a list and appraisement of the goods seized should also be made by at least one competent and disinterested person.

The tariff provides a fee for advertising and appraising the goods (see Tariff in Code 871), indicating that the goods must be appraised and advertised for sale.

The following forms of the constable's proceedings are submitted:—

CONSTABLE'S INVENTORY OF GOODS SEIZED UNDER WARRANT OF DISTRESS.

An inventory of goods and chattels by me this day seized and distrained in the of in the county of by virtue of a distress warrant issued by E.F., Esquire, a Justice of the Peace in and for the county of , dated the day of , A.D. 19 , under a conviction (or order) made by the said E.F. as such Justice on the day of , A.D. 19 . That is to say: (specify the articles seized).

Dated this

day of

, A.D. 19 .

A Constable of the said County.

APPRAISEMENT.

We, G.H. and I.K., having at the request of L.M., a constable of the county of , examined the goods and chattels mentioned in the annexed inventory, do appraise the same at the sum of \$\displaystyle{\pi}\$.

Witness our hands this

day of

, A.D. 19 .

G.H.

NOTICE OF SALE OF GOODS DISTRAINED.

By virtue of a distress warrant issued by E.F., Esquire, a Justice of the Peace in and for the county of , under a conviction (or order) made by the said Justice against C.D., I have distrained of the goods and chattels of the said C.D., to wit: (describe property). All of which goods and chattels will be sold by public auction at on the day of , A.D. 19 , at the hour of o'clock in the noon.

Dated the day

day of

, A.D. 19 .

L.M., Constable.

The distress warrant must fix the time after seizure within which the defendant is to pay in order to avoid the goods being sold: see Forms D.D.D. and E.E.E. to the Criminal Code.

The constable should seize and remove the goods immediately. He will be liable for trespass if he remains on the defendant's premises an unnecessarily long time: Paley, 6th ed., 319.

The constable may break open an outer door to execute a distress warrant for a penalty, the whole or any part of which goes to the Crown; but not on a warrant for a mere order for payment of money to the complainant: Paley, 318 (a).

Before breaking open an outer door the constable should verbally notify those within who he is, and his business there, and demand admittance. The constable must wait for the time mentioned in the warrant before selling the goods. Constable's Fees.—For the costs of distress in Dominion cases see Tariff under Code 871. The items will be as follows:—Tariff, item 9, executing warrant of distress, and returning same, \$1; item 10, advertising under warrant, \$1; item 11, Mileage to seize goods, per mile (one way only): see amendment to the Code by Dom. Stat., 1894, 13c.; item 12, appraisement—2 cents on the dollar; item 13, commission on sale—5 per cent. on the net produce of the goods. Item 13 will not be included in the above mentioned notice, as it would not be payable if the money is paid before sale of the goods.

The costs of distress under Ontario cases are:—Executing and returning warrant, \$1.50; advertising, \$1; mileage, per mile, one way, 13c.; appraisement, 2 per cent. on the value of the goods; commission on sale, 5 per cent. on net produce: R.S.O. c. 101, p. 1046.

By R.S.O. c. 75, s. 2 (d), \$1 a day is allowed for keeping possession of the goods; and by s.-s. (e), a commission of 3 per cent. may be charged if the money is paid before sale. But this only applies to Ontario cases; no commission is provided for by the Criminal Code before sale.

Release on Payment.—Under Code 901 the defendant may at any time pay or tender to the constable the amount payable under the warrant, with the expenses of the distress up to that time; and the officer must then cease to execute the warrant.

The constable, upon such payment, or upon sale of the goods, must return the warrant and money to the justice who issued it.

The constable should not execute a warrant of distress unless he finds sufficient goods to yield on sale the full amount to be realized; for if part only is realized the defend-cannot afterwards be committed for the balance. If the goods are not sufficient, they ought not to be taken, but the warrant should be so returned: Paley, 6th ed., 322; Sinden v. Brown, 17 A.R. 173; Trigerson v. Cobourg (Police) 6 O.S. 405; Form of Return I.I.I. referred to in Code 872, s.-s. 2 (a). If part of the money has been paid or realized, it must be returned to the defendant before a warrant of commitment can be issued: Sinden v. Brown, supra, at p. 176; Trigerson v. Cobourg, supra.

Upon receiving the constable's return of no sufficient distress, or in case no distress was directed, any justice for the county may issue the warrant to commit ordered by the convicting justice in his adjudication: Code 842 (4), (5).

The varrant to commit is to be addressed to any or all of the cons ables of the county, and may be executed by any

such constable anywhere in Canada.

Costs of Executing Warrant.—The warrant to commit should include the amount of the costs of the distress warrant, viz., justice's fee on warrant, 25 cents, and the constable's costs mentioned p. 27 J, if any.

It must also include the costs of the arrest of the defendant, if he was at large, and of conveying him to gaol, viz.:—
Arrest, \$1.50; mileage, per mile, one way, from the place of

arrest to the gaol, 13 cents.

The latter costs are only to be included in case the particular statute so provides; and in such case the amount of them must be stated in the warrant of commitment or it will be quashed: R. v. Corbett, 2 Can. Cr. Cas. 499.

Place of Imprisonment.—The imprisonment, if for less than two years, is to be in the county gaol or other place mentioned in the statute; or if there is no gaol in the county in which the order for imprisonment was made, then in the nearest gaol: Code 955 (2); R.S.C. c. 1, s. 7 (38); R.S.O. c. 1, s. 8 (29): or in some lawful prison other than a penitentiary: Code 955 (2).

The words originally in Code 872 (a) and (b) referring to the gaol of the territorial division are struck out by the amended statute for 1894, c. 57, the place of imprisonment

being otherwise provided as above stated.

If the defendant, against whom a warrant to commit is issued, is already in prison undergoing imprisonment on some other charge, the constable is to deliver the warrant to the gaoler, who will retain the defendant in prison for the additional period which will begin from the time the warrant is delivered to the gaoler; and so both may run concurrently for a part or the whole of the period of the second commitment. But if the convicting justice sees fit, he may include in the adjudication and warrant an order that the period of imprisonment under the second warrant is to begin at the expiry of the term of imprisonment under the first one: Code 877.

Payment to Gaoler.—The person imprisoned for non-payment may pay to the gaoler the money payable under the warrant; and the gaoler is to receive the same and discharge the defendant, if he is in custody for no other matter; and the money is to be paid to the justice who issued the warrant: Code 901 (2).

Discharge of Prisoner.—If the money is so paid, or if the Crown remits it, or if the defendant suffers the punishment, or if he is discharged from the conviction by the justice under Code 861, in cases in which the justice has authority to do so, the defendant is released from further criminal proceedings for the same cause: Code 969.

Compounding Offences.—In some cases the law allows the matter to be settled between the parties. Code 861 allows this to be done after conviction in the cases therein mentioned; and these are the only cases expressly provided for: see 54 J.P. 124. If, however, in any case, the complaint is mainly of a private nature, it seems that there can be no objection to its being withdrawn. But if the offence is one of a public character, or one against which the public should be protected, an indictment will lie against the parties compounding it: 1 Bishop's Cr. Law, s. 711, cited in 1 Can. Cr. Cas. p. 316; Archbold, 22nd ed., 1035; Baker v. Townsend, 7 Teunt. 422.

In any such case the justice should adjourn the case and notify the Crown attorney, so that the public interests may be protected.

Anyone, whether a person interested or not, may be guilty of the offence of compounding a theft, which consists in any person receiving anything from another person upon an agreement not to prosecute the offender: R. v. Burgess, 16 Q.B.D. 141.

Threats of Prosecution.—Everyone is guilty of an offence who, with intent to gain anything from any person, accuses or threatens to accuse that, or any other person with any offence: Code, 405, 406.

Laying an information for an offence is "accusing" within the meaning of that section; and if the party laying an information or causing it to be laid, receives or attempts to procure anything by pressure of such proceedings, he is guilty of an offence under the above section, even if there is no agreement not to prosecute, or to drop the prosecution: R. v. Newland, 2 Leach, C.C. 721; R. v. Kempell, 31 O.R. 631.

3. Summary Trials Before Magistrates.

The summary jurisdiction of police magistrates is extended by Part 55, ss. 782 et seq. of the Criminal Code, to the summary trial and conviction of persons charged with any of the indictable offences mentioned in Code 783. And by the amendment made by the Dominion Statute of 1895, c. 40, the offences mentioned in s.-ss. (a) and (f) of s. 783 of the Criminal Code, are also brought within the jurisdiction of two justices; but this does not extend to any other of the offences mentioned in that section. By the same statute the usual appeal lies from a conviction by two justices under these sections. The jurisdiction of a magistrate or of two justices in proceedings under Code 783 (a), (f) is absolute and not dependent upon the consent of the accused: Code 784.

By s. 785 of the Criminal Code, as amended by the Act 1900, c. 46, the jurisdiction of the magistrate is further extended to the summary trial, with the consent of the accused, of all cases in which a person is charged before him with any of the offences for which such person may be tried at the General Sessions. And by the same section of the Criminal Code a police or district magistrate may also try, with the like consent, any person who has been committed by a justice for trial for any of such offences. These offences include those which by Code 539 and 540 as amended by Dominion Statute of 1894, c. 57, and by the Criminal Code Amendment Act of 1900 (c. 46, s. 540), are within the jurisdiction of the General Sessions, viz., all indictable offences other than those specially excepted by Code 540, as so amended. And the magistrate, on conviction, may inflict the same punishment which the General Sessions could impose: Code 785.

By s.-s. 2, which was added to s. 785, this jurisdiction, which was formerly confined to magistrates in Ontario, has been extended to police and stipendiary magistrates of cities and incorporated towns of every other part of Canada, and to recorders exercising judicial functions.

It is provided also by s.-s. 3, which has been added to Code 785 by the Act of 1900, c. 46, that ss. 787 and 788 of the Code do not apply to cases tried under s. 785; but that

where the magistrate has jurisdiction by virtue of Code 785 only, no person shall be summarily tried thereunder without his own consent. And it was held in R. v. Conlin, 29 O.R. 28, before this amendment, that s. 785 stood alone, and the magistrate, acting under the same jurisdiction as the general sessions, had authority to impose like punishments, and was not restricted as to the punishment to be awarded by Code 787 and 788: see also notes in 3 Can. Cr. Cas. 591.

The amended s.-s. 3 to Code 785 now establishes the law as laid down in the Coulin case.

So "theft from the person" (Code 344) is not included in the term "theft" in Code 783 (a), but is a distinct offence, which the magistrate may try with the consent of the accused under Code 785, and impose a punishment provided by Code 344, notwithstanding the value of the thing stolen was less than \$10: R. v. Conlin, supra. So also in the case of an aggravated assault: R. v. Boucher, 8 P.R. 20: R. v. Archibald (unreported), cited in R. v. Randolph, 32 O.R. at p. 213. But "theft," not from the person, of less than \$10 is triable under Code 783 (a), and only the punishment provided by Code 787 can be awarded: R. v. Randolph, supra.

Jurisdiction was specially given to magistrates by ss. 789 and 790 of the Criminal Code to try summarily, with the consent of the accused, cases of theft, false pretences, and receiving, even if the property exceeded in value \$10, if under \$10 no consent is necessary. But by the amendment to these sections made by the Act of 1900, c. 46, the authority of the magistrate in cases of theft of property exceeding \$10 in value is now restricted. The provision of the Act of 1900 is, that if the accused has consented to be tried by the magistrate, and pleads guilty, the magistrate may convict and award such punishment as the accused would have been liable to, if he had been convicted under indictment at the general sessions. But if the accused does not consent, or if after consenting to be tried by the magistrate he pleads not guilty, the magistrate cannot now, in a case of theft exceeding \$10, try summarily, and can only remand the accused to gaol to be tried by the judge or by jury in the usual way, if upon holding a preliminary inquiry proper case is established for

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A charge of obstructing a peace officer: Code 144; cannot be tried summarily without consent: R. v. Cranston, 12 Man. R. 571.

A conviction and warrant of commitment must shew jurisdiction on their face, and if for an offence for which a magistrate can only convict on a plea of "guilty," they must state that the accused so pleaded, or they will be invalid, and the defendant will be released on habeas corpus: R. v. Collins, 5 Man. R 136; and such conviction or commitment cannot be amended by the Court: see ante p. 47; but the magistrate may file a correct conviction and commitment before it is actually quashed, or the prisoner discharged on habeas corpus: see ante p. 28.

In all cases in which a magistrate has authority, and assumes to try the accused summarily, by consent, for an indictable offence, it is important, as pointed out in the judgment in R. v. London (Jus.), 17 Cox, C.C. 526, that the magistrate should be careful to carry out the provisions contained in Code 786, and to see that the accused fully understands the effect of his consent; and if he does not inform th. accused of his right to be tried by a jury, if he so desires, the conviction will be quashed by the High Court for want of jurisdiction. The proceedings must shew on their face that the requirements of the statute, necessary to the magistrate's assuming jurisdiction, were complied with: R. v. Hoggarth. 24 O.R. 60. But quere, is not this such a defect as is covered by Code 800?: see R. v. Burtress, 3 Can. Cr. Cas. 536, in which it was held that the consent need not be stated in the conviction, being a "want of form," and cured by Code 800. But in R. v. Cockshott (1898), 1 Q.B. 582, it was held that the giving notice by the magistrate to the accused of his right to be tried by jury, was a condition precedent to jurisdiction by consent, and on certiorari a conviction was quashed when the notice had not been given; and it was held immaterial whether the defendant knew he had the right to be tried by jury. In the same case it was also held that the want of notice going to jurisdiction, and being required by the statute for the protection of accused persons, could not be waived.

When the particular statute provides for the punishment of an indictable offence which has been tried either in the usual way "or on summary conviction," s. 783 (e) and subsequent sections of the Criminal Code apply, and the accused cannot be tried summarily except by consent given under Code 786: R. v. Crossen, 3 Can. Cr. Cas. 152.

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A magistrate is not bound to try cases summarily under Code 783 or 785. It is optional with him either to do so or to commit for trial: Code 791; Re McRae, 4 B.C.R. 18.

But he should decide whether to do so or not before he calls on the accused for his defence: see Ex p. Cook, 3 Can. Cr. Cas. 73; Code 791 so expressly provides.

To proceed with the summary trial of a case, and at its conclusion commit the accused for trial would, practically, be submitting him to be tried twice for the same offence, which is repugnant to the law.

A magistrate, other than a police magistrate, for a city or incorporated town—see amending Act of 1900, s. 801, s.-s. 2—who adjudicates under Part 55 of the Criminal Code, is required to transmit all the papers to the clerk of the peace to be kept on file among the records of the General Sessions.

There is no limitation as to place within the county in which a police magistrate may act as an ex officio justice. And a police magistrate for a town may take an information and try a case in another town for which another person is police magistrate, if the offence did not take place in such last mentioned town: R. v. McLean, 3 Can. Cr. Cas. 323.

On a conviction of any person by a magistrate under Part 55 of the Criminal Code for an indictable offence, the magistrate, in addition to such other sentence as may by law be passed, is authorized by the amended s. 832 in the Act of 1900, to condemn the person convicted to pay the whole or any part of the costs and expenses incurred in and about the prosecution and conviction if he sees fit to do so, including such moderate allowance for loss of time of the prosecutor, as on inquiry on affidavit or otherwise the magistrate ascertains to be reasonable, and the moneys taken from the defendant on his apprehension, if such moneys are his own, may be ordered to be applied in paying such costs; or such payment may be enforced in the same way as the payment of any costs may be enforced by the court in any civil action or proceeding, e.g., by execution against the defendant's goods; and also against the defendant's lands, if necessary, and if the costs amount to over \$40. See R.S.O. c. 76, for proceedings to enforce orders for payment of money in civil courts, and which, under the above provisions, may be adopted in enforcing the above mentioned orders for payment of costs.

The costs allowed, under the above provisions of the Criminal Code, are to be the same as in civil suits in a superior court, according to the lowest scale: Code 835 (2).

Code 788 also authorizes magistrates to award costs, whether the penalty is fine or imprisonment, or both: R. v. Cyr, 12 P.R. 24; R. v. Burtress (S.C.N.S), 3 Can. Cr. Cas. 536. And hard labour is authorized, and may be awarded by a magistrate acting under Part 55 of the Criminal Code, on imprisonment for default of payment of a fine or compensation, even if the particular statute or clause under which the conviction takes place, does not so provide: Code 788, 955 (6); R. v. Burtress, 3 Can. Cr. Cas. 536.

Formerly, however, a justice or a magistrate, acting under the ordinary summary convictions clauses (Part 58 of the Criminal Code), could not award hard labour on a commitment for default of payment of a fine: R. v. Horton, 3 Can. Cr. Cas. 84. This has been remedied by the amendment in Code 872 in the Act 1900, which provides that where a pecuniary penalty or compensation is adjudged to be paid, and by the Act or law under which the conviction is made the justice might have awarded imprisonment with hard labour as part of the punishment for the offence, then the imprisonment for default of payment of the fine or compensation may be with hard labour or not, as the justice sees fit: see notes in 3 Can. Cr. Cas. p. 538.

As to the forms of adjudication and conviction for penalties, care must be taken to award the "forfeiture" of the penalty. A conviction which merely "orders" payment, and not that the defendant shall "forfeit" and pay, is bad and will be quashed: R. v. Cyr, 12 P.R. 24; R. v. Crowell, 2 Can. Cr. Cas. 34; R. v. Burtress, 3 Can. Cr. Cas. 536; Paley,6thed., 264.

Restoration of Property.—Authority is also given on a summary conviction for theft or unlawfully obtaining any property, and if it appears upon the evidence that the accused has sold the property or part of it, to order that any money taken from the prisoner upon his arrest may be applied in making restitution, if such money is the property of the prisoner: Code 837.

Code 838, as amended by the Statute of 1893, c. 32. authorizes the magistrate, on conviction, to order the restoration of stolen property to the owner or his representative; and a writ or order of execution may be issued in a summary

manner. And even if the person charged is not convicted of the offence charged, such restitution may be ordered if it is proved to the satisfaction of the magistrate by whom the accused was tried, that such property really belongs to the prosecutor or any witness for the prosecution, and that he was unlawfully deprived of it by such offence: Code 838, s.-s. 2. But if the property has got into the hands of a third person bona fide and for just and valuable consideration, without any notice or reasonable cause to suspect that it had been stolen, or if it has been transferred to an innocent purchaser for value, who has acquired a lawful title thereto, restitution is not to be ordered: Code 838(3). The above s. 838 does not apply to the case of prosecution of a trustee, banker, merchant, attorney, factor, broker, or other agent entrusted with goods, for an offence under Code 320 or 363.

The proceeds of the sale of the stolen property may, however, be ordered to be restored and delivered to the owner if the property has been sold: R. v. J. J. Central Cr. Court, 18 Q.B.D. 314.

Property found on the prisoner but not connected with, or not being the proceeds of the stolen property, cannot be dealt with by the magistrate: R. v. London, El. B. & E. 509.

Section 958 of the Criminal Code, as amended by the Act of 1900, also gives the magistrate authority to require the person convicted to forthwith give security for his future good behaviour, for not more than two years, and in default, to order imprisonment for not more than one year after the expiry of his sentence for his offence, unless such security is sooner given; and in cases where not more than five years' imprisonment may be awarded as punishment for the offence, the magistrate may inflict a fine in lieu or in addition to the imprisonment, and in such case the sentence may direct that, in default of payment of the fine, the defendant be imprisoned for not more than five years, to commence at the end of the imprisonment awarded for the offence, unless such fine is sooner paid.

The same section also authorizes the magistrate, in cases where the offence is punishable with more than five years imprisonment, to award a fine in lieu, or in addition thereto, and to inflict imprisonment for not more than five years, to commence at the expiry of the imprisonment awarded for the offence, unless the fine is sooner paid. This amendment to

Code 958 is intended to remove doubts, which were previously entertained, whether a magistrate could impose a fine in lieu or addition to imprisonment under Code 787.

A magistrate may impose costs, as well as both fine and imprisonment: R. v. Cyr, 12 P.R. 24; R. v. Burtress (N.S.), 3 Can. Cr. Cas. 536.

Hard labour may be imposed on imprisonment for default of payment of a fine, as well as on imprisonment for an offence: R. v. Burtress, supra.

The statute of Ontario, 53 Vict., c. 18, s. 2, extending the summary jurisdiction of police magistrates to cases of forgery is *ultra vires*: R. v. Toland, 22 O.R. 505; but see *contra*, R. v. Levinger, 22 O.R. 690.

As to a magistrate's jurisdiction regarding juvenile offenders, see chapter on "Juvenile Offenders."

Police magistrates for cities may sentence females convicted before them of offences against Dominion laws to houses of refuge: 57 & 58 Vict., c. 60 (Dom.). The consent of the superintendent is required in such cases: s. 12; and no female child is to be sent to a place provided for adult paupers.

As to commitment of prisoners to the Central prison, and other penal institutions, see R.S.C. c. 183. This Act is still in force, not being repealed by the schedule to the Criminal Code: R. v. Spooner (Ont. Divl. Court), 27th Dec., 1900.

Justices' and Magistrates' Returns. - Justices are required to make a return to the clerk of the peace, on or before the second Tuesday in March, June, September and December in each year, of all convictions made by them for offences against Dominion law: Code 902; and against Ontario law: R.S.O. c. 93, ss. 1, 2; such return to include all convictions made up to the end of the next preceding month. The return is to include all moneys received for fines, etc., and of their application, and all matters or proceedings taken or moneys received subsequent to any previous return, and not included therein: Code 902 (5). If two or more justices join in a hearing and conviction, they must make a joint return of it: Code 902 (2); and on a joint conviction under an Ontario law such return is to be made immediately after making a conviction. The forms of returns are provided by Code 902: Form S.S.S. to the Criminal Code; and by R.S.O. c. 93, s. 1, the latter being given at the end of the statute. The form is to include a column for the costs imposed.

The penalty for default in making such returns, or for wilfully making a false, partial or incorrect return, is \$80: Code 902 (6); R.S.O. c. 93, s. 3. Actions for such penalties must be brought within six calendar months next after the cause of action arose: Code 904; R.S.O. c. 93, s. 4.

The above provisions of the Criminal Code as to returns of convictions under Dominion laws, apply to police and stipendiary magistrates as well as justices, the word "justice" in Code 902 being interpreted by Code 839 (a) to include such magistrates. But by R.S.O. c. 94, s. 6, the above mentioned provisions of R.S.O. c. 93, s. 1, requiring justices to make returns of convictions under Ontario laws, do not apply to police or stipendiary magistrates, even when acting as ex officio justices: Hunt v. Shaver, 22 A.R. 202.

R.S.O. c. 94, s. 8, requires police magistrates to forward to the clerk of the peace, and also to the inspector of legal offices, Osgoode Hall, Toronto, on or before the second Tuesday in March, June, September and December, a certified copy of the book required to be kept by magistrates under s. 1 of the above statute, shewing the convictione made up to the end of the previou. month, including any transactions which may have taken place during the period covered by the return, with reference to any previous conviction. penalty for not keeping the book mentioned is \$80, and actions for such penalties must be brought within six calendar months: same stat. s. 5; see also R.S.O. c. 93, s. 4.

The Revised Statute, c. 94, does not apply to the police magistrate for Toronto.

Fines and penalties received by justices or magistrates, are to be paid over by them as specially directed by the particular statute under which the conviction is made. Formerly, if no such provision was made, the justice or magistrate was required to pay over the fines in the manner provided by Code 806, but by the Dominion Statute, 1900, c. 46, Code 806 is repealed, and a new section 927 is substituted for that section of the original Code, under the provisions of which, all fines and penalties imposed and recovered by justices and magistrates, and the proceeds of all estreated recognizances, are now to be paid to the Provincial Treasurer, if no other provision is made by the particular statute respecting the

offence. But this does not apply to fines and forfeitures for breach of the Canadian Revenue Laws or for malfeasance in office by a Dominion official, nor to cases in which the proceeding is at the instance of the Dominion Government, if the latter bears the cost of prosecution; in such cases the fines and forfeitures are to be paid to the Receiver-General of Canada. The Dominion laws as to the disposal of fines and forfeitures by magistrates do not apply to cases under Ontario laws, under which the fines and penalties are to be paid over in the manner provided by the statutes relating to particular offences.

CHAPTER XVI.

JUVENILE OFFENDERS.

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The following statutes make special provision for the trials and punishment of youthful offenders.

When Charged with Theft, etc.: Criminal Code, ss. 809-831.—Part 56, ss. 809-831, of the Criminal Code, deal with the cases of juveniles charged with theft, or attempted theft (or any "offence punishable as such;" i.e., any of the offences under ss. 303-313 of the Criminal Code), and who appear to be under 16 years old at the time the offence is also Code 825.

Who May Try.—Two or more justices (which term, by the definition in Code 809 (1), includes a county judge, or a police or stipendiary magistrate, or two justices) are authorized to try such cases summarily, and to award punishment. No consent by the accused is necessary: but before being called on to plead to the charge, the justices are required to say to the accused: "We shall have to hear what you wish to say in answer to the charge against you; but if you wish to be tried by a jury, you must object now to our deciding upon it at once:" Code 813.

If the accused, or his parent or guardian, then sojects (he cannot object afterwards), the justices cannot deal with the case summarily under these provisions; but they may proceed with a preliminary inquiry, in accordance with Parts 44 and 45 of the Criminal Code relating to cases of indictable offences, and described at pp. 185 et seq: Code 813 (2) and 814.

But a county judge, or a police or stipendiary magistrate, is also given jurisdiction to try summarily all cases of theft under \$10 in value, and also of attempted thefts of any amount, by Part 55 (s. 783 (a), (b), and s. 787) of the Criminal Code: see pp. 282 et seq.

And the Dominion Act of 1895, c. 40, amending Code 783, gives two justices, sitting together, the same jurisdiction over charges of theft under \$10, but not of attempted thefts.

Under these sections the jurisdiction of a magistrate, or two justices, to try the case summarily does not depend upon consent or non-objection, but is absolute.

If, therefore, the charge against a juvenile offender for theft, or attempted theft, of anything under \$10 in value, is before a magistrate, or if a charge of theft under \$10 is before two justices, they may proceed with a summary trial, even without the offender's consent: see also the last part of Code \$13 (2).

In proceeding under Code 809 et seq., the justices are not to try the case summarily, if the charge appears, from any circumstances, to be a fit subject for indictment, even if the accused does not object; and in that event, they are to hold a preliminary inquiry only: Code 814.

Code 791 is similar, and is applicable to cases of thefts of

less than \$10 above mentioned.

If the accused elects, according to Code 813, to be tried by a jury, the warrant of commitment for trial must so state: Code 814 (2).

Proceedings.—The proceedings for the trial of juvenile offenders under the above ss. 809 et seq., are initiated by a sworn information by a "credible witness:" Code 811. The usual forms of information (Form C.), and of summons (Form "E."), and warrant to apprehend (Form F.), as given in the Criminal Code, may be adapted to the above proceedings.

The information may be taken and the summons or warrant against the accused may be issued, by one justice; but the form of summons will then be changed, so as to require the accused to appear before two justices (or a magistrate): Code 811-818.

The usual powers of remand or adjournment, and for taking recognizances for the appearance of the accused thereon, are given by Code 812; see Forms P. and Q. given by the Criminal Code.

Witnesses may be summoned and, if necessary, bound over to attend: Code 815, 816; and they may be arrested under a warrant, for neglecting or refusing to attend, upon proof of service of the summons; or of the witness having been bound over to appear: Code 817.

The proceedings are the same as in other cases before magistrates, for which see ante pp. 208 et seq.

Summonses for witnesses are to be served in the manner provided by Code 818.

The summons for a witness may be issued by any one justice, the form being changed, so as to require the witness to attend before the two justices or magistrate: Code 815 and 818; Form K. to the Criminal Code (as amended by the Act of 1895, c. 40).

One of the justices before whom the witness is required to attend, may receive the proof of service, and issue the warrant for the arrest of the witness for non-attendance: Code 817; see Form N. given in the Criminal Code of warrant to arrest a witness.

The Hearing —The proceedings on the hearing are to be the same as in ordinary summary trials (see ante pp. 282 et seq.), or preliminary inquiries (see ante pp. 225 et seq.), as the case may be, with the following variations:

The trials of persons, apparently under sixteen years of age, for any offence under a Dominion law, must take place without publicity, and separately and apart from the trials of other accused persons; and at suitable times, to be designated and appointed for that purpose: Dominion Statute, 57-58 Vict., c. 38, s. 1.

And by s. 2, such persons, on being arrested or committed to custody in any case, either before, during or after the trial or hearing, but before imprisonment under sentence, shall be kept in custody separate and apart from older persons charged with criminal offences, and from all persons undergoing sentence of imprisonment; and shall not be confined in lock-ups, or police stations, with older persons charged with criminal offences, or with ordinary criminals.

Notice to Parent, etc.—The last mentioned provisions apply to all cases, whether of offences under Code 809, or any Dominion law. In the case of a boy under twelve, or girl under thirteen years, charged with any offence under Dominion laws, the justices or magistrate are required by 57-58 Vict., c. 58, to give notice of the proceedings to the executive officer (the secretary or president will suffice) of the Children's Aid Society (if there is any in the county), and also to the child's parent, and all the requirements of the last mentioned statute, as stated post p. 298, in regard to proceedings against youthful offenders apply, and must be followed.

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FORM OF NOTICE TO PARENT AND TO THE CHILDREN'S AID SOCIETY. (57-58 VICT., c. 58.)

Canada. Province of County of

To A.B., Esquire, Secretary (or President) of the Children's Aid Society for the County of , and to C.D., parent of the boy (or

girl), hereinafter named. You are hereby notified that, on the day of , A.D. 19, an information was duly laid by E.F. of, etc., against G.H., a boy, apparently under the age of 12 years (or, a girl, apparently under the age of 13 years), a son (or a daughter), of you, the said C.D., as it is alleged, for that (set out the charge with particulars), and the said C.D. has been arrested upon a warrant thereon (or, has been summoned to , A.D. 19 , day of answer the said charge), and the at the in the County of of has been appointed for the hearing of the said charge at , in the hour of before the undersigned Police Magistrate (pr., two of His Majesty's , against the Justices of the Peace) in and for the said G.H.

Dated at , in the County of , this day of A.D. 19 .

K.L., Police Magistrate; or M.N., O.R., J.P's., County of

The usual affidavit of service will be annexed to the above notice.

Release without Punishment in certain cases.—If the magistrate or justices upon the hearing of the charge of theft or attempted theft under the above sections of the Criminal Code, deem the case not proved; or, if proved, that it is not expedient to inflict any punishment, they are to dismiss the accused, but must first require him (in the latter case), to find sureties for his future good behaviour: Code 819.

The grounds stated in Code 971, as amended by the Act of 1900, c. 46, would be fit grounds for "deeming it not expedient to inflict any punishment:" viz.: the age, character and antecedents of the offender; or the trivial nature of the offence; or any extenuating circumstances under which the offence was committed. The following is a form of recognizance.

RECOGNIZANCE FOR GOOD BEHAVIOUR.

See ante p. 87, for form of the recognizance; but instead of the condition there given insert the following:

"The condition of the above written recognizance is such that if the above bound C.D. shall be of good behaviour for the term of twelve months now next ensuing, then this recognizance to be void, otherwise to stand in full force and virtue."

On finding the case not proved (or, if proved, on sureties being given for future good conduct), no conviction is recorded, but the accused is to be dismissed; and a certificate of dismissal is to be made out and delivered to him, in the Form T.T. in the Criminal Code; Code 819; and the accused, upon obtaining such certificate, or if he is convicted, is released from any other criminal charge for the same cause; Code 821.

Conviction.—If the case is tried summarily, the accused may be convicted upon his own confession, or upon proof: Code 810; and the form of conviction may be drawn up in the Form U.U. to the Criminal Code: Code 820. The conviction must be signed and sealed by both justices, or the magistrate, as the case may be.

Code 820 (2) provides that such conviction is not to be quashed for want of form, nor to be removed by certiorari or otherwise; and that no warrant of commitment under it is to be held void for any defect therein, if it is therein alleged that the defendant has been convicted, and there is a good and valid conviction to sustain it.

Notwithstanding this section the High Court may order the proceedings to be removed by certiorari, if the justices have acted in any way in excess of their jurisdiction, but only upon that ground: see Certiorari, ante pp. 27, 28

Punishment.—The punishment on conviction, is prescribed by Code 810, viz., imprisonment, with or without hard labour, for not more than three months, in the common jail, "or other place of confinement, within the jurisdiction of the justices:" see Code 809 (2).

The form of warrant to commit, R.R.R. given in the Criminal Code, may be adapted by making the necessary changes.

It is declared by Code 830, that the above provisions of the Criminal Code do not authorize two or more justices, but only a magistrate or judge, to sentence such offenders to the provincial reformatory. It is to be noticed that boys under thirteen cannot be received there: R.S.O. c. 13, s. 28.

Instead of imprisonment as above provided, the justices may "adjudge" that the offender "forfeit and pay" a fine not exceeding \$20: Code 810.

The mode of enforcing payment is provided by Code 825. If the fine is not at once paid, the justices may, if they deem

it expedient, appoint a future day for such payment, and order the offender to be detained "in safe custody" until such day; unless security is given by recognizance "or otherwise" (meaning, prob. bly, by the deposit of property), for his appearance on the day appointed: Code 825.

If the fine is not then paid, a warrant under the hands and seals of the same or any other justices may be issued (Form R.R.R. above mentioned changed to suit the facts), committing the offender to gaol, or other place of confinement within the justices' jurisdiction, for not more than three months, "reckoned from the day of such adjudication:" Code 825 (2).

The justices issuing a warrant to commit are merely acting ministerially, and are in no sense "adjudicating." The intention of ss. 810, 825 of the Criminal Code probably is that where the justices have made an adjudication under Code 810 directing the fine to be paid forthwith, but the accused is unable to pay the money then, time may be given, the justices fixing a day for payment, and adjourning the case until that day, naming the hour and place; and if the money is not paid as so ordered, the justices may, at the adjourned hearing, add a clause to the minute of adjudication fixing the term of imprisonment, which is to be "reckoned from the day of such adjudication;" and not from the time the accused may be lodged in gaol, as is provided by the forms of commitment in the Criminal Code. The justices and the gaoler must be careful to observe this difference.

It is very doubtful whether any other justices than those who convicted the accused could award the imprisonment, notwithstanding Code 825.

No provision is made in the statute, for release after commitment if the fine is paid before the term of imprisonment expires. Code 901 (a) is only applicable to proceedings under Part 55 of the Criminal Code. Probably Code 969 may reach the case; and the form of conviction U.U. provides that the offender be released on payment at any time.

Restitution.—Besides the above punishment, the justices have authority to order restitution of the stolen property: Code 824; and if it is not forthcoming, they may enquire and ascertain its value, and order payment of it; and the money so ordered to be paid may be recovered by suit against the offender, as for a debt: Code 824 (2) (3).

The latter part of this section is probably ultra vives, as giving a right of action against minors, and thus dealing with civil rights, which are within the exclusive jurisdiction of the provincial legislatures, by the B.N.A., s. 92 (13). Code 837 gives authority to order restitution, in certain cases, out of any money found on the prisoner.

Code 826 enables the justices, at the request of the prosecutor, or a witness for the prosecution, to order payment of reasonable and sufficient sums to reimburse them respectively for their expenses in attending before the justices, or otherwise, in carrying on the prosecution, and for their trouble and loss of time; and they may also order payment of the constable's fees for the apprehension and detention of the offender; and (Code 826 (2)) such payment may be ordered, although no conviction takes place, if the justices are of opinion that the persons claiming such payments acted in good faith. Code 826 does not expressly say that the payment of these costs is to be ordered to be made by the accused, even if he is convicted or found guilty; and probably this section is to be read in connection with s. 828, which provides for the payment of costs out of the county funds. But the latter section is practically abrogated, being only applicable prior to the repeal of Code 827, and the substitution of a new s. 927, by the Criminal Code Amendment Act, 1900, c. 46, by which the fines levied under these sections are no longer payable to the county treasurer but to the provincial treasurer, and consequently there will no longer be any county fund provided thereby, out of which alone such costs can be paid as directed by Code 828.

Returns.—Convictions and recognizances under the above sections of the Criminal Code are to be forthwith transmitted by the justices to the clerk of the peace, to be kept among the records of the General Sessions: Code 822. And the clerk of the peace is required to transmit to the Minister of Agriculture, Ottawa, quarterly return of such convictions: Code 823.

A conviction under the above provisions of the Cr. Code is not invalid if it omits to state the age of the child, or the opinion of the justices on that subject, as it is presumed that they acted rightly: and as the questions of age and of religious belief could not or need not be enquired into at the trial of the offence, they would properly form a subject of enquiry on the part of the justices after conviction and before

mentence, and it would not, therefore, be necessary to refer to them in the conviction: R. v. Brine, 33 N.S.R. 43.

Dominion Statute, 1894.—Additional provisions for dealing with youthful offenders in the Province of Ontario only, are made by m. 3 et meq. of the Dom. Stat., 57-58 Vict., c. 58, and which applies not only to prosecutions for the offences referred to in Code 809, but also to all other offences against Dominion laws.

By section 3 of this statute, a child apparently under 14, if summarily convicted in Ontario of any offence against the law of Canada, whether indictable or punishable on summary conviction before any court or justice, may, instead of the imprisonment provided by law for the case, be committed to the charge of any Home for destitute and neglected children, or to the charge of any Children's Aid Society duly organized in any part of Ontario, and approved by the Lieut.-Governor (see R.S.O. c. 259, ss. 7-20, as to Children's Aid Societies), or to any certified Industrial School (see the Industrial Schools Act, R.S.O. c. 304). The child must be under 13 to be received in any Industrial School: s. 16.

By 8, 4 of the statute of 1894, whenever an information or complaint is laid, in Ontario, against a boy under 12, or a girl under 13 years, for any offence against the law of Canada, whether indictable or summary, the court, justice or magistrate seized of the case must give notice in writing to the executive officer of the Children's Aid Society, if there is one in the county, and allow him to investigate the charge; and the justice or magistrate should also notify the child's parents (see form ante p. 294), or other person apparently interested in his welfare. And the justice is to advise and counsel with them, and consider any report made by such officer, upon the charges. If after such consultation and advice, and after hearing the complaint in the usual way, the justice or magistrate is of opinion that the interest and welfare of the child will be best served thereby, then, instead of sentencing the child, the justice may by order:

- (a). Authorize the officer of a Children's Aid Society to take the child, and bind it out under the Act respecting apprentices and minors (R.S.O. c. 161, s. 6), to some suitable person until it is 21 years old, or any lesser age.
 - (b). Or place the child in a foster-home (private family).
 - (c). Or impose a fine not exceeding \$10.

(d). Or suspend sentence, either for a definite or indefinite period.

(c). Or, if the child is found guilty of the offence, or even if not convicted, if the child is shewn to be wayward and unmanageable, the justice or magistrate may commit the child to a certified industrial school, or to the Ontario Reformatory for Boys (but see the Ontario Reformatory Aet, R.S.O. c, 313, s, 28, which prohibits the reception there of boys under 13).

Or may commit the child, if a girl, to the refuge for girls (see R.S.O. c. 310, s. 7, as to the Ontario Industrial Refuge for Girls, where they may be received at any age up to 14 years).

FORM OF ORDER FOR DELIVERY OF A CHILD CHARGED WITH A CRIMINAL OFFENCE, TO A CHILDREN'S ABD SOCIETY OR INDUSTRIAL SCHOOL, 57-58 VICT., C. 58, 88, 3, 4 (DOM.).

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Whereas, on the day of r.A.D. 19, an information was duly laid, on oath (or affirmation) before the undersigned, one of the Majesty's Justices of the Peace in and for the county of or Police Magistrate in and for the

, by A.B. against C.D. of , for that (set out the charge).

And whereas the said C.D., having been brought before me to answer the said charge, and it appearing to me that the said C.D. is a boy under

the age of 12 years (or, a girl under the age of 13 years), I did on the day of A.D. 19, cause notice in writing to be duly given to the Executive Officer of the Children's Aid Society for the said county of (or if there is no such society state that fact), and to E.D., the father (or mother) of the said C.D.

And having advised and counselled with the said Officer and with the the said E.D. (or as the case may be), and having considered the report made by the said Officer upon the said charge, and having duly heard the matter of the said information, I am of opinion that the public interest and the welfare of the said C.D. will be best served hereby.

I do order that G.H., Esquire, the said Executive Officer of the said Children's Aid Society, be and he is hereby authorized to take the said C.D., and under the provisions of the law of the Province of Ontario, to place the said C.D. out in some approved foster-home, or bind the said C.D. out to some suitable person until the said C.D. shall have attained the age of 21 years (or any less age may be here stated).

(Or, instead of the preceding paragraph beginning "I do order," insert the following):-

And whereas I did on this day of the trial of the said C.D. upon the said charge (if it is one within the justice or magistrate's summary jurisdiction) in the presence and hearing of the said C.D., and of the said Officer of the Children's Aid Society, and of the said E.D., the parent of the said child, duly convict the said C.D., and find him guilty of the said offence

Or, (if the child is not tried, insert the following in place of the above recital of conviction) it having been shown that the said C.D. is wilfully wayward and unmanageable:

I do order that the said C.D. be and he is hereby committed to the Victoria Industrial School at Mimico (if the child is a Protestant; or if a Roman Catholic, substitute the St. John's Industrial School, East Toronto, in the County of York. If the child is a girl, she is to be committed to the Alexandra Industrial School for Girls, East Toronto, if a Protestant; or to the St. Mary's Industrial School at Toronto, if the girl is a Roman Catholic: see post pp. 304, 316).

And I further order, pursuant to the Revised Statutes of Ontario, c. 259, s. 6, that, until the said C.D. shall reach the age of otherwise provided for, the Treasurer of the Municipality of the of , which I specify to be the municipality responsible for the maintenance of the said C.D. in that behalf, shall pay to the said Children's Aid Society (or to the Industrial School to which the child has

been committed, naming it, as the case may be) the sum of \$ towards the maintenance of the said C.D.

, A.D. 19 , a day of Given under my hand and seal this in the county of

(Signed)

J.P., County of or Police Magistrate.

If the child, being a boy over 13 years old (see R.S.O. c. 304, s. 16), is convicted under s. 3 of the above Dominion Statute, 57-58 Vict., c. 58, he should either be ordered to be given in charge of the Children's Aid Society, or if he is not fit to be placed out as an apprentice or in a private family, he should be committed to an industrial school or the Provincial Reformatory for Boys at Penetanguishene, or if a girl of like character, to an industrial school or the Ontario Industrial Refuge for Girls at Toronto.

A copy of the above order and the depositions in the case, with the following certificate of the justice or magistrate, is to be sent to the clerk of the municipality chargeable with maintenance :---

CERTIFICATE OF JUSTICE OR MAGISTRATE.

Province of Ontario, County of City of

I do hereby certify that the papers hereto annexed are true copies of the depositions and order made by me in the case of C.D. therein named.

, A.D. 19 . , this day of Dated at

The report of the officer of the Children's Aid Society upon the case is to be attached to the order of commitment: s. 4 (e) of 57-58 Vict. c. 57.

After being so committed, the child is to be dealt with under the law of Ontario, and as if committed under an Ontario statute: s. 5.

Dominion Statute of 1890.—There is also the Dominion Statute, 53 Vict., c. 37, which is not repeated (see appendix to Criminal Code), and which provides that a magistrate may sentence a boy, who is convicted before him of any offence in Ontario, against any Dominion law, to a certified industrial school, for not more than five nor less than two years; but he is not to be detained there after attaining the age of 17 years.

Code 956.—By Code 956, also, any offender not over 16, may on conviction be sentenced to the Ontario Reformatory for Boys at Penetanguishene. As already mentioned, the boy must not be under 13 years old: R.S.O. c. 313, 88, 27, 28.

The following notice must also be attached and sent to the clerk of the municipality:

Notice to County (or City, or Separated Town) Liable for the Child's Maintenance, under R.S.O. c. 259, 8. 6 (1.)

To

The Clerk of the Municipality of the of

Take Notice that the foregoing is a true copy of an order made by me, and annexed hereto are copies of the depositions upon which the child therein named has been committed.

You are required to take notice that unless the municipality of the of moves before me to set aside or vary the above order, within one calendar month from the time of your receiving said order from me, the municipality will be deemed to have consented to the order, and will be estopped from denying liability thereunder.

Dated at the of , this day of , A.D. 19 .

G.H.,
J.P.,

Or, Police Magistrate, in and

for the

The order, with a copy of the depositions and the following medical certificate, is to be furnished to the authorities of the Industrial School or the officer of the Children's Aid Society.

MEDICAL CERTIFICATE.

I, , of the , of , in the County of , being a duly qualified medical practitioner in Ontario (or, as the ease may be), do certify that I have this day exemined C.D. a boy (or as the case may be), committed to St. John's Industrial School at East Toronto, and I do certify that the said C.D. is free from any contagious disease,

as well as any mental or physical defect or weakness that might interfere with his industrial training, and that he (or she) may be safely admitted as an inmate of St. John's Industrial School (or as the case may be), without injury to the health or well-being of the other boys (or girls) there.

Dated at , this day of , A.D. 19 .

If the parent, or person interested in the child, claims that the disposition made of the child by the above order is illegal, habeas corpus will lie: see chapter on "Habeas Corpus" ante, for proceedings. And an appeal lies: see ante "Appeals under Dominion Laws," for proceedings.

R.S.C. c. 183.—The various provisions of the Criminal Code above referred to do not supersede those made by the Act respecting public and reformatory prisons, R.S.C. c. 183, which is still in force, having been taken from a statute passed before confederation, and not having been repealed by Code 981, and schedule 2 of the Criminal Code: R. v. Spooner, 32 O.R. 451.

Sections 25 30 of this Act provide for the committal to the Ontario Reformatory of boys appearing to be under 16 years old; and ss. 39-41 for the committal to the Industrial Refuge of girls of not over 14, who have been convicted under Dominion laws by any "court" (defined by s. 18 to include police and stipendiary magistrates, but not one or more justices) in Ontario. Under s. 46 the superintendent of the reformatory or refuge may, in the name of the inspector of prisons, bind the boy or girl as an apprentice to learn a trade or service, for a term not exceeding five years from the commencement of the imprisonment, unless the boy or girl consents to a longer term, and the prisoner is thereupon to be discharged on probation. By s.-s. 2 the consent of the Governor-General is required to such discharge; and by s. 48 a county court judge or police magistrate may re-commit any such boy or girl to the reformatory or refuge upon violation of the conditions of the discharge.

The Industrial Schools Act.—The Industrial Schools Act R.S.O. c. 304, s. 16 (1), authorizes the authorities of an industrial school to receive and detain boys under 13, who are convicted of an offence against Dominion law. If over that age, the boy is to be sent to the Ontario Reformatory for Boys, Penetanguishene: R.S.O. c. 313, s. 28.

The above mentioned provisions of Code 809 et seq., and of 956, and of the Dominion statutes, 53 Vict., c. 37. and

57 & 58 Vict., c. 58, only apply to prosecutions for offences against Dominion laws.

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Neglected or Dependent Children's Act (Ontario).—But by the Ontario Act for the protection of neglected children, R.S.O. c. 259, similar provisions are made for proceedings on the prosecution of juvenile offenders against Ontario laws.

By s. 29, s.-ss. 1, 2 and 3, it is the duty of cities and towns of more than 10,000 inhabitants to make separate provision for the custody of children under the age of 16 years; and , they are not to be put in the ordinary cells or lock-ups, nor to be tried in the ordinary police court rooms, if practicable; or an interval of two hours must elapse after the other trials for the day.

Hearing to be Private.—By s. 29 (4), the judge (which term includes a magistrate, or two justices acting together: see s. 2 (d)) is directed, in all cases in which a child under 16 is being tried or examined, to exclude from the place all persons other than the counsel and witnesses, officers of the law and of the Children's Aid Society, and the immediate friends or relations of the child. And, by s. 32, no such child is to be placed in the same cell or room with adult prisoners, but is to be kept apart as far as possible. 31 of the same Act, a magistrate, before whom a child under 14 is convicted of any offence against Ontario law, may, instead of committing the child to prison, order that it be handed over to the charge of any home for destitute or neglected children, or an industrial school, or a Children's Aid Society, who may permit its adoption by a suitable person, or may apprentice it to any suitable trade or service.

Notice to Parents and Children's Aid Society.—By s. 30, when a boy under 12, or a girl under 13, is charged with an offence against Ontario law, before any court or magistrate of competent jurisdiction, notice in writing is to be given to the executive officer of the Children's Aid Society, if any, and the child's parents should also be notified, and the proceedings and dealings with the case are to be similar to those above described at p. 298, under s. 4 of the Dominion statute, 57 & 58 Vict., c. 58.

The Industrial Schools Act.—By the Industrial Schools Act, R.S.O. c. 304, s. 14, any one apparently under 13, who has been convicted before a judge or magistrate, or one or more justices, for an offence against Ontario law, may be com-

mitted to an industrial school for an indefinite period, and may be detained there until he is 17 years old (now 18 years: see Amendment Act of 1900).

And by s. 15 a judge or magistrate, upon complaint of the industrial school authorities that such boy's conduct is incorrigible, or for any of the other reasons there stated, may order the offender to be transferred from the industrial school to the Ontario Reformatory, for an undefined period, not to exceed his original sentence.

Section 11 of the same Act also provides for the committal to an industrial school of a child, apparently under 14 years old, who has been found guilty of petty crime.

In dering with children under any of the above laws, it is to be noticed that a child, found guilty of an offence against the law, cannot be sent to an industrial school if it is over the age of 13 years: R.S.O. c. 304, s. 16; but if sent there for any cause other than crime, the child may be received up to the age of 14 years. If beyond these years, the child, if a boy, may be sent to the Ontario Reformatory for Boys, at Penetanguishene, up to the age of 16 years: R.S.O. c. 313, s. 28; or in the case of a girl over 13, and under 16 years old, to the Ontario Industrial Refuge for Girls. at Toronto: R.S.O. c. 310, s. 1.

R.S.O. c. 312, s. 8, prohibits the committal of a child to any institution for adult paupers.

Certified Industrial Schools in Ontario.—The certified industrial schools in Ontario, to which children may be committed or sent under the above laws, are:

The Victoria Industrial School for Boys, at Mimico (Protestant).

The St. John's Industrial School for Boys, at East Toronto (Roman Catholic).

The Alexandra Industrial School for Girls, at Toronto (Protestant).

The St. Mary's Industrial School at Toronto (Roman Catholic).

Child's Maintenance.—A child placed in charge of a Children's Aid Society, or in a foster home, or committed to an industrial school, must be supported by the municipality to which it belongs.

The following are the statutory provisions:

A judge, magistrate, or two justices, on application of a Children's Aid Society to whose care a child is committed, may order the payment by the county, city or separated town to which the child belongs, of a reasonable sum, not less than \$1 a week, towards the expense of supporting a boy until he is 14, or a girl until she is 12 years old: R.S.O. c. 259, s. 6 (1). The child is deemed to belong to the municipality in which he has last resided for one year, and, in the absence of evidence to the contrary, the presumption is that he belongs to the municipality in which he was taken into custody: s. 6 (2).

But the latter municipality may recover the amount paid by it from another municipality which may be really responsible: s. 6 (3); or from the child's parent: s. 6, sub.-s. 4.

The order for committal is to include the order for payment, and may also direct repayment by the parent to the municipality: s. 5.

If, however, a child is committed to an industrial school, or refuge, for boys or girls, or other institution subject to government inspection, or any other society authorized by law, provision is made by R.S.O. c. 259, s. 36, for the child's maintenance so long as it remains there, without reference to

By that section, the judge, magistrate or justice committing a child to any of these institutions, is to specify, by the order of committal, the municipality chargeable with such maintenance. Section 30 of R.S.O. c. 304, makes provision for ascertaining what municipality is liable for maintenance in such case, as follows:

If the child is not a resident of the city or separated town where the industrial school is situated, or if it has not resided there for one year, but has resided for that period in some other county, city, or town separated from the county, the latter county, city or town is liable for such maintenance. And sub.-s. 2 provides that even if the child was at one time resident for one year or more in the municipality in which the industrial school is situated, but subsequently resided for at least one year in some other municipality, the latter is liable for the charge of maintenance; the liability is fixed upon the municipality in which the child was last resident for at least one year: s. 30 (2).

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If the child last resided for one year in the municipality in which the industrial school is situated, the latter municipality must pay \$2 a week for its maintenance: s. 30 (3).

In dealing with the case of a child under the above laws, and after conviction has taken place, evidence should be taken in the usual way upon the question of responsibility for maintenance. It is not necessary to first notify the municipality.

Upon an order being made for maintenance against a municipality, a copy of the order and of the depositions is to be sent to the cierk of the municipality, by registered letter; and the municipality may give notice and may move against the order before the judge, magistrate or justice who made it. And in that event evidence may be taken, all parties interested being previously notified: and the order may be confirmed, reversed or amended. But if the municipality does not give notice and move against the order in this manner, within one month from the time the clerk received the copy, the municipality will be estopped from denying liability: R.S.O. c. 259, s. 36.

The order may be enforced in the manner provided by R.S.O. c. 76. See also R.S.O. c. 259, s. 27 (2), as to the parent's responsibility for such maintenance.

The liability for maintenance is not affected by the child being afterwards placed by the industrial school arthorities in a foster home, except that, when the cost of maintenance is thereby reduced, the municipality is only liable for what the industrial school actually pays for such maintenance: R.S.O. c. 304, s. 20.

The above provisions apply to cases where child offenders are committed under Dominion laws, as well as under Ontario laws: R.S.O. c. 304, s. 16 (2); and the order for chargeability for maintenance of an offender against Dominion law, and transferred from prison to an industrial school, or committed to such school, may be made by the judge or magistrate before whom the offender was committed, at any time, as in the case of an offender against Provincial law: s. 16 (3).

When a child is committed to a reformatory, industrial school or refuge, the magistrate or justices are to deliver to the superintendent a certified copy of the depositions in the case: R.S.O. c. 304, s. 23; R.S.O. c. 310, s. 18.

It is a criminal offence for a child, who has been committed to, or ordered to be detained in, an industrial school or other institution above-mentioned, to escape: and the child may be arrested without a warrant and brought before a magistrate, who, upon proof of the child's identity, may either remand him back to such institution, or in case of an incorrigible child, may commit him or her to any reformatory prison for the remainder of the original term, or if such term has expired at the time of such arrest, for a further time not exceeding one year: 53 Vict. (Dom.), c. 37, s. 1.

And the police, or stipendiary magistrate may, in any case in which the officers of an industrial school bring a child, who is under detention there, before him (which they may do without a warrant), order that the child be transferred to any reformatory prison: Same statute, s. 2.

The proper place to which to transfer such child, if a boy, is the Ontario Reformatory for Boys, Penetanguishene; or if a girl, to the Industrial Refuge for Girls, in connection with the Mercer Reformatory, at Toronto.

The provisions of the above statutes for dealing with youthful offenders apply to prosecutions under the Act respecting apprentices and minors: R.S.O. c. 161.

Sections 2 and 3 of that Act empower a parent, or a guardian or person having the charge of a minor, or any authorized charitable institution (such as an authorized Children's Aid Society), with the child's consent, if a boy of 14, or a girl of 12, and without such consent, if under that age, to enter into articles appointing any trustworthy person to be the child's guardian. And, in case of a boy of 14, or girl of 12, may with the child's consent, bind him or her as an apprentice: s. 6. And if the father has abandoned the child and left it with the mother, she may, with the consent of two justices, bind the child as an apprentice: s. 7. The mayor of a town, or a county judge, or police magistrate may, with the consent of the minor, if a girl of 12, or boy of 14 or upwards, and without such consent if under that age, bind as an apprentice, any child who is an orphan, or who has been deserted by its parents, or whose parents have been committed to gaol or house of correction, or any child who is dependent upon charity: a. 8.

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A judge, or police magistrate, may hear complaints by the apprentice or master: s. 14; and he may, in his discretion, cancel the articles of apprenticeship; ss. 14-17. If an apprentice absents himself from his master's service, he may be arrested anywhere in Ontario and brought before a justice or police magistrate; and may be ordered to make satisfaction as directed by the justice or magistrate; ss. 18-19; and in default, the apprentice may be committed to gaol for not more than three months; s. 19 (2). No such proceeding can be taken after three years next after the expiration of the time served, or from the apprentice's return to Ontario, if he has been absent from the province: s. 20; and s. 24 empowers the judge, magistrate or justice to award costs in any proceeding under the Act.

All fines collected under the above Act are to be paid to the treasurer of the local municipality where the offence was committed: s. 25.

An appeal lies to the General Sessions from a decision by a justice or magistrate under the above Act: s. 26.

And an appeal may be made to a Judge of the High Court in Chambers from an order of the General Sessions cancelling or varying articles of apprenticeship, or cancelling guardianship: s. 27; and the practice upon such appeal is provided by that section.

CHAPTER XVII.

NEGLECTED OR DEPENDENT CHILDREN.

The Ontario Industrial Schools Act, R.S.O. c. 304, contains provisions for sending to an industrial school neglected or depraved children, even when they are not charged with any offence against the law.

By s. 11 any child apparently under 14 may be dealt with under the Act who is—

(a). Found begging, receiving alms, or in a street or public place for such purpose.

(b). Wandering and not having a home or settled abode, or proper guardianship, or occupation, or visible means of support.

(c). Destitute, being an orphan, or having a parent in prison.

(d). Whose parent or guardian represents that he is unable to control him, and desires him to be sent to an industrial school.

(e). Who by reason of neglect, drunkenness, or other vice of parents, is growing up without salutary parental control and education, or in circumstances exposing him to lead an idle and dissolute life.

(f). Who has been found guilty of petty crime, and it is the magistrate's opinion that he should be sent to an industrial school.

(g). Who (being between 8 and 14 years old) has been expelled from school for vicious and immoral conduct.

In any of the above instances a judge or magistrate (or one or more justices) may have the child brought before him without formal information, and in the presence of the child evidence is to be taken under oath, and the judge or magistrate or justice is required to make reasonable inquiries into the matter, and if found expedient, he may order the child to be sent to an industrial school for such term as seems proper, for its teaching and training, not beyond the age of 16 years: s. 12.

And by a 13 the industrial school is authorized to receive such child.

Although no formal proceedings are provided, it is proper that due formality should be observed: and (as specially provided, in sending a girl to the refuge, under similar circumstances: R.S.O. c. 310, s. 10) the proceedings and forms under R.S.O. c. 90, and Criminal Code, Part 58, and which proceedings are set forth in the chapter on "Summary Convictions," ante p. 244, should be followed as nearly as may be: see Forms at the end of the present chapter.

All the provisions of the Act respecting neglected children, and of the Industrial Schools Act, apply to the

cases of girls as well as boys.

The Industrial Refuge for Girls.—R.S.O. c. 310, respecting the Industrial Refuge for Girls in the Mercer Reformatory Building, Toronto, contain somewhat similar provisions to those in the Industrial Schools Act. But the provisions of s.-ss. (f), (g), of s. 13, and also ss. 14 and 16 (1) of the Industrial Schools Act, are omitted; and a girl under the age of 14, who is summarily convicted before a magistrate or justice, cannot be committed to the Industrial Refuge. If, however, a girl is committed to jail by a magistrate or justice in the usual way, a High Court or county judge may have her brought before him, and may commit her to the refuge for not less than two or more than five years: R.S.O. c. 310, s. 5.

The authority to commit a girl under 14 to the refuge for other causes than crime, is extended by s. 7 to police magistrates, but not to justices; differing in that respect also

from the Industrial Schools Act.

Section 10 provides for the proceedings and forms to be

In other respects, the provisions of both Acts, as to dealing with children, are similar; and the same proceedings

may be taken as above indicated.

By s. 11 no definite time need be fixed by the commitment for the detention of the girl in the refuge. The warrant of commitment is to authorize some female to convey the girl to the refuge: s. 14; in which case the person employed will be entitled to receive from the county the same fees as a constable for like services: ss. 15-19. For tariff of fees, see p. 280.

Or the judge or magistrate may direct the detention of the girl in some proper place of confinement until someone authorized by the provincial authorities takes her to the refuge: s. 14. In the latter case, the judge or magistrate is to notify the superintendent of the refuge: s. 15.

The Children's Protection Act of Ontario.—By R.S.O. c. 259 very extensive and useful authority is given to a judge, police or stipendiary magistrate, or two justices, to take proceedings for the rescue of neglected, abused or destitute children, of which proceedings an outline is now given.

Section 7 (1) authorizes police commissioners in cities, and the county judge elsewhere, to appoint officers of a Children's Aid Society to act as constables under the Act. Such officer may apprehend without warrant, and bring before a "judge" (which term includes also a stipendiary or police magistrate, or two justices: a. 2 (d).

Any boy apparently under 14, or girl under 16, who-

 (a). Is found begging, receiving alms, or thieving in any street or public resort, or sleeping at night in the open air;

(b). Wandering at late hours, having no home or settled abode, or guardianship;

(c). Associating or dwelling with a thief, drunkard or a vagrant; or by reason of neglect, drunkenness or other vices of parents or guardians, is growing up without salutary parental control and education, or under circumstances exposing it to an idle and dissolute life;

(d). Is found in a house of ill-fame, or in the company of a reputed prostitute. As to what evidence of the character of the house is sufficient, see R. v. McNamara, 20 O. R. 489, and R. v. St. Clair, 27 A.R. 308, and cases there cited.

(e). Or is found destitute, being a prephan or deserted by parents, or having a surviving parent in prison for crime.

A child so apprehended must be brought before a judge, magistrate, or two justices within one week for investigation of the facts, as to whether the child is dependent and neglected, its age, name and residence of parents; and witnesses are to be summoned, and the county attorney may be required to attend and assist: s. 8. The parents or persons in charge must be notified; Form infine; and any friend of the child may appear for it; and the attendance of a representative of the Children's Aid Society may be requested on its behalf.

If it is found that the child comes within any of the provisions of s. 7, s.-s. 2, or if it is found to be in a state of habitual vagrancy or mendicancy, or if it is ill-treated so as to be in peril of life or health, or morality, by continual personal injury, or by grave misconduct, or habitual intemperance of parent or guardian, such finding is to be entered on the proceedings by an order; and a formal order may be made out for the delivery of the child to the Children's Aid Society, who may send it to their temporary home or shelter to be kept until placed in an approved foster-home or private family: s. 8. There is no appeal from an order made under this statute by a magistrate or two justices; those officials, acting under this statute, being persona designata: Re Grainger and The Children's Aid Society, Kingston, 28 O.R. 555.

The Children's Aid Society is to be given a certified copy of the order, with a statement of the facts, so far as they can be ascertained, as to the age, name of the child, and the nationality, residence and occupation of the parents, or whether either of them is dead, or has abandoned the child; and one order may include two or more children examined at the same time.

If the child is immoral or depraved, or for any other reason is not a fit subject to be given in charge of the Children's Aid Society with a view of its being placed in a private family, it may be ordered to be sent to an industrial refuge for girls, or one of the industrial schools for boys abovementioned, until it is 18 years old, or for not more than two years, and after the latter period to be given in charge of a Children's Aid Society to be placed in a private family until the child is 18 years old: a. 8 (2).

Forms of proceedings are given, post p. 318.

The Children's Aid Society, upon a child being committed to its care becomes its guardian, and must use special diligence in providing a suitable home for it; and it may place the child in a private family on a written contract, until it is of the age of 18 years; the contract is to provide for the child's schooling, and learning of some useful occupation, and for kind and proper treatment as a member of the family; and for payment to the Society of such sum as may be agreed on; and the contract is to contain a clause empowering the Society to take the child away again, if the welfare of the child requires it: a. 10.

The Society is given, by s. 10 (2), all the powers of guardianship conferred by ss. 2 and 6 of the Act respecting apprentices and minors: R.S.O. c. 161.

If such child was deserted by the parents, the Society may at any time resolve that the child shall remain under the Society's control, until it is of the age of 21 years or any earlier age; and until that time, the Society is to have all the rights and powers of a parent: s. 11; or the Society may return the child to its parent, or to any relative or friend: s. 11 (2).

A parent may by writing surrender a child to any Children's Aid Society or to any incorporated Boys' or Girls' Home, or Asylum or Children's or Infants' Home; and upon so doing the parent forfeits all right to its custody or control or authority over it, or right to interfere with it: s. 13.

A parent or guardian, or anyone may complain to a judge, magistrate or two justices, that any child is improperly detained by a Children's Aid Society or other charitable institution; and such order may be made as the welfare of the child requires, and is just and reasonable: s. 14.

Section 22 provides for the prosecution of any person over 16 years old, who ill-treats or neglects a boy in his charge who is under 14, or girl under 16 years old.

Any "constable" (see s. 26 (3)) or officer of a Children's Aid Society, who has been approved as mentioned in s. 26 (3), may arrest without warrant, any person he sees committing such offence against a child, if the name and residence of such person is unknown to him: s. 26 (1). And the "constable" may take the child to a place of safety: same section.

A magistrate or two justices may then proceed by information and summons or warrant, to hear the charge; and if the evidence sustains it, may then convict the party ill-using the child, in the usual way, proceeding as in summary trials.

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And a fine of not more than \$100, or (instead of a fine) imprisonment, with or without hard labour, for not more than six months, or both fine and imprisonment, may be imposed. In default of payment of such fine, imprisonment may be awarded for not more than three months, with or without hard labour; the latter to be in addition to any imprisonment awarded for the offence; and the imprisonment for non-payment of the fine may be ordered to begin on the expiry of that awarded as punishment.

If anyone so convicted, is found to have an interest in any sum of money payable on the death of the child, and is shewn to be aware of that fact, the fine may be increased to \$250, and the imprisonment to nine months: s. 23.

Section 24 makes it an offence for anyone to cause a boy under 14, or girl under 16:

(1). To be in any street for the purpose of begging or receiving alms, or to induce the giving of alms under the pretence of singing, playing, performing, offering anything for sale.

(2). Or to be in any street, or on any premises licensed to sell intoxicants, for the purpose of singing, playing, or performing for profit, or offering anything for sale, between 10 p.m. and 6 a.m.

(3). Or to be in any circus or place of public amusement, for the purpose of singing, playing, or performing for profit, or offering anything for sale (unless licensed in the manner provided by s. 24, s.-s. 2).

Any "constable" may arrest without warrant any person he sees committing this offence, if the name and residence of the person is unknown and cannot be ascertained by him, and may take the child to a place of safety: s. 26 (1).

Such person guilty of such offence may be convicted before a magistrate or two justices, and the same punishment may be awarded as that above mentioned, under s. 22. But under s.-s. 2, a police magistrate, or the mayor of a town, or the reeve of a village or township, or the warden of the county, may grant a license for a child over seven years old to be employed in a place of public amusement or circus subject to certain regulations, if it is shewn that such child is fit and not likely to be injured.

In case such license is allowed, the municipality must assign to some officer the duty of seeing that the regulations and conditions of the license are complied with, and such officer may enter and inspect any such place of amusement. The chief constable shall be such officer until one is specially appointed: s. 24 (3).

Any police magistrate or two justices may, upon a sworn information by any person bona fide acting in the interests of any child, that there is reasonable cause to suspect that such child, being a boy under 14, or a girl under 16, is being ill-treated or neglected in any place within their jurisdiction,

issue a warrant to search for the child, and if the officer finds that it has been ill-treated or neglected, he is to take it to a place of safety until it can be brought before a judge, magistrate or two justices: s. 25; and the search-warrant, or a separate warrant to be issued, may authorize the arrest of any person accused of any offence against the law in respect of such child; and proceedings may be then gone on with to try the offender and award punishment: s. 25 (3). The officer executing the warrant may enter by force, if need be, any house or place specified in the warrant, and remove the child: sub.-s. 4. The search warrant, or warrant of arrest, is to be addressed to a superior office - of police (e.g. an inspector), or where there is no such officer, to any policeman or constable approved of, for that purpose, by the mayor of the town, or other head of the municipality: s. 25 (5). One justice may exercise all the powers under the above section 25 (instead of two) if the case appears to be urgent: s. 25 (2).

A boy under 14, or girl under 16, may be ordered by a judge, magistrate or two justices, to be taken out of the custody of any person who has been convicted of any offence against the child under s. 22, or who has been committed for trial for such offence, or bound over to keep the peace towards the child: s. 27 (1).

The order may direct that the child be committed to the committed to the committed to the committed to some relative, or other fit person willing to receive it, until, if a boy he is 14, or 16 if a girl, it attains those ages respectively, or for any shorter period, or may order it to be committed to the care of the Children's Aid Society: 8. 27 (1).

But if the parent, who is committed for trial, is afterwards acquitted of the charge, the above order is to become ipso facto vacated: s. 27 (2).

Any person may be prosecuted, and convicted summarily in the usual way, before a justice, who induces any child to leave the premises or custody of any Children's Aid Society, or Boys' or Girls' Home, or Orphan's Home, or Children's or Infant's Home; or who induces, or attempts to induce, any child to quit any service or apprenticeship where the child has been placed under the Act, or who detains or harbours any such child after demand made for its delivery up: s. 28.

The punishment for any infraction of s. 28 is a fine not exceeding \$20 and costs, and in default of payment, imprisonment not exceeding 30 days.

In any prosecution under this Act, the child may give evidence; and if it is too young to know the nature of an oath, the evidence is to be taken without oath. But in the latter event such evidence must be corroborated: s. 34 (2).

These latter provisions are similar to those of the Canada Evidence Act, 1893, s. 25, as to which, and as to what corroboration is necessary: see the chapter on "Evidence."

The law provides that in dealing with a child under any of the above Acts, no Protestant child is to be sent to any Roman Catholic institution, or family, and vice versa: see Dom. Stat., 1894, c. 58, a. 6; R.S.O. c. 259, a. 38; also s. 12 (4) and 27 (2) of the latter statute; also R.S.O. c. 304, s. 17. But this does not apply to the care of children in a temporary home or shelter of a Children's Aid Society, in a municipality where there is only one such society: R.S.O. c. 259, s. 38 (2).

A list of the Industrial Schools in Ontario is given ante p. 304.

These institutions are kindly conducted homes and schools, where the child will be well cared for, fitly educated, and taught some useful occupation; and will be under those influences which tend to the formation of regular habits.

All of the above Industrial Schools, as well as the shelters of the Children's Aid Societies, and all children placed in foster homes are, by law, under the inspection of Mr. J. J. Kelso (Superintendent of neglected and dependent children, Parliament Buildings, Toronto), who is appointed by the Ontario Government, for the oversight of all children brought under the operation of any of the above statutes, and with whom communication may be made, at any time, by anyone concerned.

There is no responsibility resting upon a judicial officer, requiring greater care, good judgment and reserve, than that of administering the above laws relating to children; and particularly so, in the absence of actual and serious crime on the part of the child, or its parents, or those in charge of it. The law lays down, in the above statutes, the conditions under which it is considered that a child should be taken from the primarily rightful and natural control of its parents, and placed in other hands; and the basis of those laws, is the extreme necessity, arising out of the circumstances which require such action; having regard to the child's life-long welfare.

Where the line is to be drawn, under the facts of each particular case, it is the onerous duty of the judicial officer dealing with it, to ascertain and decide; applying the provisions of the above statutes as exactly as possible.

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That duty cannot be discharged upon considerations based upon a censorious view of the manner in which a parent is bringing up his child; that is a matter for the parent's own judgment. The law authorizes the extreme course of the child's removal, only when the parent himself asks to have the law applied, on the ground that the child has become entirely beyond his control; or when the parent has forfeited, by gross ill-usage or neglect of the child, or by his own criminal conduct or flagrant vices, his otherwise undoubted right over it; or when the conduct of the child has become so wilfully wayward and vicious that it is necessary in its interests, as well as in the interests of the public, to take it away, in order to apply the training and discipline requisite in the endeavour to save it from a profligate life, and from becoming a burden upon the community. In any of these circumstances the law should be unhesitatingly applied, and the child removed. If the child is not found guilty of flagrant crime, and is not vicious or depraved, and does not require more than proper parental control and discipline, which, however, it cannot, or does not, receive, the child should, if possible, be given in charge of a Children's Aid Society, as provided by R.S.O. c. 259, s. 8 (ante p. 312), with the view to its being placed in a private family, or apprenticed to learn a trade or service. Otherwise, it should be sent to the Ontario Reformatory for Boys, or to the Ontario Industrial Refuge for Girls, or to one of the industrial schools above mention d, according to its age, in which institutions the means of exerting necessary discipline is greater then is possible in a private family.

The following proceedings are to be taken in dealing with neglected or dependent children under the above Acts.

When an officer, of a Children's Aid Society, who has been appointed by the county judge to act as a constable under The Children's Protection Act, R.S.O. c. 259, s. 7 (1), or any chief constable or inspector of police (s. 7 (2)), has apprehended a boy under 14, or girl under 16 years old, as he may do without a warrant (s. 7 (2)), the child may be kept in charge of the Children's Aid Society, but is to be

brought, within one week, before a judge, magistrate or two justices, or a justice specially appointed: s. 2(d) and s. 8.

The following notice is, in the meantime, to be at once given to the child's parents or guardian.

NOTE.—That "any person" may bring before a judge, magistrate or any justice of the peace, a child who comes within any of the provisions of the "Industrial Schools Act," R.S.O. c. 304, s. 11, and in that case the Children's Aid Society should be notified, and the same proceedings should be taken.

Notice to Parent or Guardian of Apprehension of Child. R.S.O. c. 259, s. 8.

Province of Ontario, County of To wit:

To wit:

The day of , 19 .

To C.D. and E.D.

You are hereby notified, as the "parents" (or "persons" having the custody), of A.B., a child apprehended under the provisions of The Children's Protection Act, that the investigation of the facts in his (or her) case will be held before , at the hour of o'clock in the noon, on day, the day of 19, at , at which time and place you are requested to appear and shew cause, if any there is, why the judge (or magistrate) or justice presiding should not order the delivery of the said A.B. to the Children's Aid Society of the of , or commit him (or her) to an Industrial School, pursuant to the provisions of the said Act.

Agent, C. A. Society of the of

AFFIDAVIT OF SERVICE ON CHILD'S PARENTS.

I, of the of , in the County of , make oath and say:—

That I did on day of , one thousand nine hundred and , serve C.D. and E.D., the parents (or as the case may be), of A.B. at the of , with a true copy of the within notice by delivering such copy to and leaving the same with each of them personally.

Sworn before me at the in the County of this day

J.P., (or) Police Magistrate.

FORM OF SUBPŒNA TO WITNESS.

Province of Ontario. County of

To E.F., of

Whereas A.B., a child apparently under the age of 14 years (if a boy, or 16 years if a girl), has been brought before me G.H., Esquire (Judge, Magistrate or Justice, describing him), to be dealt with under the Children's Protection Act of Ontario, and it hath been made to appear that you are likely to give material evidence on behalf of the complainant, the Children's Aid Society of the County of , in this behalf.

These are therefore to require you to be and appear before me, or before , at the , in in the year of our Lord , in the said , on the 19 , at the hour of noor, to testify what you shall know concerning the said matter. in the

Herein fail not.

Given under my hand and seal this 19 , at the of aforesaid

Province of Ontario.

To wit:

County of

Constable of the of and say :-

That I did on the day of , in the year of our Lord 19 , personally serve the within named E.F. with a true copy of That I did on the within subporns, and at the time of such service I exhibited to the said E.F., the within original subpoena.

Sworn before me at the this day of in the year of our Lord

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CAPTION OF DEPOSITIONS.

, a boy apparently of the age of 14 years (or a girl apparently under the age of 16 years), is brought before me, the undersigned G.H., County Judge of the County of (or Police Magistrate in and for the of , or G.H. and K.L., two of His Majesty's Justices of the Peace in and for the County of), at a special sitting for that purpose on this day of , A.D. 19 , to be dealt with under The Children's Protection Act, s. 8, R.S.O. c. 259 (or s. 11 of the Industrial Schools Act, R.S.O. c. 304), and other statutes bearing upon the case, the said A.B. (having been found begging on the public street in the said of , or stating any of the grounds mentioned in the above sections) the following evidence was thereupon taken on oath before me in the presence and hearing of the said A.B., and of , Esq., (President) of the Children's Aid Society for the County of Esq., the County Crown Attorney for the said County, and of C.B., the father (or mother or guardian) of the said A.B. (or C.D., the father or mother or guardian of the said A.B. failing to attend before me although duly notified).

E.F., being duly aworn, says (set out the evidence of the several witnesses, which should be signed by them and the magistrate.)

ORDER FOR DELIVERY OF A NEGLECTED OR ABUSED CHILD TO A CHILDREN'S AID SOCIETY.

C. 259, R.S.O. s. 8.

Province of Ontario.

County of

To wit:

In the matter of A.B., a neglected child, G.H. (Judge, Magistrate or Justices describing them) presiding at the investigation.

Whereas, on this day of , A.D. 19 , one, A.B., an alleged dependent and neglected child, has been brought before me by the Children's Aid Society of to determine if the said A.B. be a dependent and neglected child within the meaning of the Statutes in such case made and provided.

And whereas, due notice of this investigation, as appears by the affidavit attached to the written notice filed herein, has been served upon C.D. and D.B., the parents (or guardian) of the said child, and the said C.B. has appeared (or not appeared).

Upon hearing the evidence offered by the said Children's Aid Society, and upon hearing what was alleged by all the parties, and having duly investigated the facts, I (or we) do find that the said A.B. is a dependent and neglected child, within the meaning of The Children's Protection Act, so as to be ("in a state of habitual vagrancy, or mendicancy, or ill-treated so as to be in peril of life, health or morality by continued personal injury, or by grave misconduct or habitual intemperance of the parents or guardian; or, as the case may be: see s. 8).

That the said A.B.'s name, in full, is (set out names in full), and that years of age on the day of far as can be ascertained.

That the parents of the said child are C.B. and D.B. And that the said C.B., the father of the said child, resides at and is a (labourer), that his nationality is persuasion is (Protestant or Roman Catholic, as the case may be); stating the name, nationality, residence, religion and occupation of parents or either of them.

And after hearing the said evidence, and having determined that the said A.B. is a dependent and neglected child (here state whether either of the parents is dead, or has abandoned the child), I (or we) do order that the said A.B. be delivered into the care and custody of the said Society, and that now he be taken to the Temporary Home or Shelter of the said Society, to be there kept until placed in an approved Foster Home, pursuant to the provisions of the said Act.

And I do further order, pursuant to the said Act, that until the said Treasurer of the Municipality of shall new to the per week, the same to be applied towards the maintenance of the said child.

Given under my hand and seal this year of our Lord, 19

If it appears that the child has been leading an immoral or deprayed life, or is for any reason not a fit subject to be placed in a foster-home, then omit the clause in the above order delivering the child to the custody of the C. A. Society and substitute the following:-

I (or we) do order that the said A.B. be committed to the (name one of the Industrial Schools mentioned at ante p. 304, or to the Ontario Reformatory for Boys, or to the Industrial Refuge for Girls (or other institution mentioned in s. 8 of R.S.O. c. 269), for the period there mentioned).

Instead of the above order, the child may be dealt with under the Industrial Schools Act, R.S.O. c. 304, s. 11, if ne comes within any of the conditions there mentioned, in which case the following order may be made:-

FORM OF ORDER OF COMMITTAL TO AN INDUSTRIAL SCHOOL. R.S.O. c. 304, s. 11.

I (we)

Judge of the County Court of the County of (or
Police Magistrate, or Justice of the Peace in and for

Additional County Court of the County of (or having satisfied myself upon inquiry that it is expedient for me to deal

, a child in my opinion under the age of 14 years, years old last birthday, which was as nearly as I can he being ascertain on or about the Schools Act, do therefore order that said A.B. be sent to the Industrial School, at , in the County of , last, under the Industrial Industrial School, at , in the County of , there to be detained for a period not extending beyond the time when he shall have

I further certify that under the provisions of s. 30 of the said Act, the Municipality of the (county, city, or town separated) of is life for the maintenance of the said A.B., unless otherwise provided for.

day of

Judge of or Police Magistrate, or J.P., County of

In the case of either of the above orders being made, it should be in duplicate, and a copy of the evidence should be attached, and one copy is to be sent by registered letter to the clerk of the municipality chargeable with maintenance, with the notice given ante p. 301, annexed, and the other with a copy of the depositions and the medical certificate given ante p. 301, is to be sent to the head master of the industrial school: see directions given in the pages indicated

A municipality which incurs responsibility under R.S.O. c. 259, for maintenance, may 1' over by action in the Division Court, the amount from the child's parent: R.S.O. c. 259, s. 6 (4).

CHAPTER XVIII.

SYNOPHIS OF OFFENCES, WITH FORMS.

Provisions of the Law.—Examples of the manner of stating offences are given in Form F.F. to the Criminal Code.

As to what is a sufficient statement: see Code 610, 611, 845, 846, and the amendment of Code 846 by the statute of 1900, c. 46, which declares that the description of an offence in any proceeding, in the words of the Act, by-law, regulation, or other document creating the offence, or in any similar words, shall be sufficient in law.

Tribunals.—(Justices:) One justice (or two or more justices, if it is so required by the particular statute), may try those offences only, which by any statute or law creating the offence, are declared to be so triable; but if a statute provides for the punishment of a particular offence on "summary conviction," a justice is impliedly given jurisdiction, even if it is not so expressly specified.

Objection by the parties does not now oust the summary jurisdiction of justices in common assault: see the Amended

Code 864 in the Act of 1900.

Two or more justices sitting together have, by virtue of the Amended Code 782 in the statute of 1895, c. 40, jurisdiction to try summarily without the consent of the accused, the offence of theft, or of obtaining money or property by false pretences, or unlawfully receiving stolen property, if the value does not exceed \$10: (Code 783 (a)); and also the offence of keeping, or being an inmate or habitual frequenter of any disorderly house, house of ill-fame, or bawdy house: (Code 783 (f)).

In other cases than those referred to in the above paragraphs, a justice has no authority to proceed with a summary trial; but is to hold a preliminary enquiry, and proceed as

described in chapter XV., (1).

(Magistrate.)—A "magistrate:" (see the definition in Code 782, as amended by the statute of 1895, c. 40), has absolute jurisdiction to try summarily without the consent of

the accused, any of the offences enumerated in Code 783; see also Code 784 as amended by the statute of 1900, c. 46.

The offences so triable are the following:

Code 783.—(a) Theft, or obtaining money or property by false pretences, or unlawfully receiving stolen property, and the value of the property alleged to have been stolen, obtained or received, does not, in the judgment of the magistrate, exceed \$10.

(b) Attempting to commit theft; (but the above offences can only be tried by the magistrate if the accused not only consents but also pleads guilty: see infra).

(c) Aggravated assault by unlawfully and maliciously inflicting upon any other person, either with or without a weapon or instrument, any grievous bodily harm: or by unlawfully and maliciously wounding any other person.

(d) assault upon any female whatsoever, or upon any male child whose age does not, in the opinion of the magistrate, exceed fourteen years, such assault being of a nature which cannot, in the opinion of the magistrate, be sufficiently punished by a summary conviction before him under any other part of this Act, and such assault, if upon a female, not amounting, in his opinion, to an assault with intent to commit a rape;

(e) assaulting, obstructing, molesting or hindering any peace officer or public officer in the lawful performance of his duty, or with intent to prevent the performance thereof;

(f) keeping or being an inmate, or habitual frequenter of any disorderly house, house of ill-fame or bawdy house;

(g) using or knowingly allowing any part of any premises under his control to be used—

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(i) for the purpose of recording or registering any bet or wager, or selling any pool; or

(ii) keeping, exhibiting, or employing, or knowingly allowing to be kept, exhibited or employed, any device or apparatus for the purpose of recording or registering any bet or wager, or selling any pool;

(h) becoming the custodian or depositary of any money, property, or valuable thing staked, wagered or pledged;

(i) recording or registering any bet or wager, or selling any pool, upon the result of any political or municipal election

or of any race, or of any contest or trial of skill, or endurance of man or beast.

Forms of these charges are given infra under the different titles.

A magistrate has also jurisdiction, by Code 785 as amended by the statute of 1900, c. 46, to try summarily, with the consent of the accused, and to punish, as there mentioned, any offence which can be tried before the General Sessions, whether the same is included in those mentioned in Code 783, or not; and whether the accused has been originally charged before such magistrate, or has been committed for trial by any justice for the county.

This section of the Criminal Code formerly applied only to magistrates in Ontario, but was extended to magistrates of cities and towns in every part of Canada, and to recorders where they exercise judicial functions by amended Code 785 (2) in the Statute of 1900, c. 46.

The General Sessions has power to try any indictable offence, other than those specially excepted from such jurisdiction by Code 540, as amended by the statute of 1894, c. 57, and by the statute of 1900, c. 46.

So a magistrate has the like jurisdiction, and may try all indictable offences, provided the accused consents, except the following:

Treason, Code 65; accessories after the fact of treason 67; treasonable offences, 68, 69, 70; assault on the king, 71. inciting to mutiny, 72; unlawfully obtaining and communicating official information, 77; communicating information acquired by holding office, 78; administering, taking or procuring the taking of oaths to commit certain crimes, 120; administering, taking or procuring the taking of other unlawful oaths, 121; seditious offences, 124; libels on foreign sovereigns, 125; spreading false news, 126; piracy: any of the sections in Part VIII. of the Criminal Code; judicial corruption, 131; corruption of officers employed in prosecuting offenders, 132; frauds upon the Government, 133; breach of trust by a public officer, 135; corrupt practices in municipal affairs, 136; selling and purchasing offices, 137; murder, 231; attempts to murder, 232; threats to murder, 233; conspiracy to murder, 234; accessory after the fact to murder, 235; rape, 267; attempt to commit rape, 268; defamatory libel: any of the sections in Part XXIII.; combinations in restraint of

trade, 520; conspiring or attempting to commit, or being accessory after the fact to any of the foregoing offences; also bribery, or undue influence, personation or other corrupt practice under "The Dominion Elections Act." See also R.S.C. c. 8, s. 116.

The above offences can only be tried by a "Superior Court;" and a magistrate or justice is to hold a preliminary enquiry only. All other indictable offences may be tried by a magistrate, if the accused consents.

But the offences of theft, false pretences and unlawfully receiving stolen property, of over \$10 in value, cannot now be tried by a magistrate unless the accused 1 ot only consents, but also pleads guilty: see the new Code 789 in the statute of 1900.

Limitation of Time to Prosecute.—In the case of an offence punishable on summary conviction by a justice, if the time is not limited by the particular statute relating to the offence, the information must be laid within six calendar months, except in the North-West Territories, where it is twelve months.

Prosecutions for any of the offences named in Code 551, must be brought within the various times there mentioned.

For other offences, there is no time limited, unless the particular statute, creating the offence, so provides.

For further observations and the authorities cited on the above subjects, see the preceding pages of this book under the different titles.

OFFENCES.

Abandonment of Child Under Two Years Old: Code 216.—Every one is guilty of an indictable offence and liable to three years imprisonment who unlawfully abandons or exposes any child under the age of two years, whereby its life is endangered, or its health is permanently injured.

2. The words "abandon" and "expose" include a wilful omission to take charge of the child on the part of a person legally bound to do so, and any mode of dealing with it calculated to leave it exposed to risk without protection.

Form of Charge.—That A.B., at , on did unlawfully abandon and expose A., a child (or a child whose name is unknown) then under the age of two years, whereby the health of

the said child is permanently injured (or, whereby the life of the said child was endangered).

Tribunal, - Sessions. Magistrate on consent.

Limitation.-None.

Abduction of Woman of any Age: Code 281.—Every one is guilty of an indictable offence and liable to fourteen years imprisonment who, with intent to marry or carnally know any woman, whether married or not, or with intent to cause any woman to be married to or carnally known by any other person, takes away or detains any woman of any age against her will.

Form of Charge.—That A.B., on , at , did unlawfully take away (or detain) against her will a woman, named C.D., with intent to marry her (or carnally know her), or with intent to cause her to be married to (or carnally known by) E.F.

Tribunal.—Sessions. Magistrate on consent. Limitation.—None.

Abduction of an Heiress: Code 282.—Every one is guilty of an indictable offence and liable to fourteen years imprisonment who, with intent to marry or carnally know any woman, or with intent to cause any woman to be married or carnally known by any person—

(a) From motives of lucre takes away or detains against her will any such woman of any age who has any interest, whether legal or equitable, present or future, absolute, conditional or contingent, in any real or personal estate, or who is a presumptive heiress or co-heiress or presumptive next of kin to any one having such interest; or,

(b) Fraudulently allures, takes away or detains any such woman, being under the age of twenty-one years, out of the possession and against the will of her father or mother, or of any other person having the lawful care or charge of her, with intent to marry or carnally know her.

Form of Charge (under Code 282 (a)).—That A.B., on , did, for motives of lucre, unlawfully take away (or detain), against her will, a woman, named C.D., with intent to marry (or carnally know) the said C.D., or with intent to cause her to be married to (or carnally known by) E.F., she, the said C.D., then having a legal (or equitable) present absolute (or future absolute, or future conditional, or contingent) interest in real (or personal) estate; or, she then being a presumptive heiress (or co-heiress, or presumptive next of kin) of G.H., who then had a legal (or equitable) present absolute (or future absolute, or future conditional, or contingent) interest in real (or personal) estate; or

Under Code 282 (b).—That A.B., on , at , with intent to marry (or carnally know) a woman, named C.D., she then

being under the age of 21 years, did fraudulently allure (or take away, or detain) the said C.D. out of the possession, and against the will, of her father or mother, or of E.F., a person having the lawful care (or charge) of her, the said C.D.

Tribunal, -- Bessions. Magistrate on concent. Limitation. -- None.

Abduction of a Girl under Sixteen; Code is been one is guilty of an indictable offence and liable to fix year imprisonment who unlawfully takes or cause or or taken any unmarried girl, being under the age of sixteen years out of the possession and against the will of her father or mother, or of any other person having the lawful care or charge of her.

- 2. It is immaterial whether the girl is taken with her own consent or at her own suggestion or not.
- 3. It is immaterial whether or not the offender believed the girl to be of or above the age of sixteen.

Form of Charge.—That A.B. on , at unlawfully take (or cause to be taken) an unmarried girl named C.D. out of the possession and against the will of her father (or mother, or of E.F., a person then having the lawful care or charge of her, the said C.D.) she, the said C.D. then being under the age of 16 years.

Tribunal.—Sessions. Magistrate on consent. Limitation.—None.

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Abduction: Stealing Children under Fourteen: Code 284.—Every one is guilty of an indictable offence and liable to seven years imprisonment who, with intent to deprive any parent or guardian, or other person having the lawful charge, of any child under the age of fourteen years, of the possessian of such child, or with intent to steal any article about or on the person of such child, unlawfully—

- (a) Takes or entices away or detains any such child; or
- (b) Receives or harbours any such child knowing it to have been dealt with as aforesaid.
- 2. Nothing in this section shall extend to any one who gets possession of any child, claiming in good faith a right to the possession of the child.

Form of Charge; (Code 284 (a)).—That A.B. on did unlawfully take (or entice) away (or detain) a child named C.D., then under the age of 14 years, with intent to steal a certain article, namely; (describe the article) then being on or about the person of the said child; or with intent to deprive E.F., the parent (or the guardian, or the person then having lawful charge) of the said child of the possession of such child (or if the charge is under Code 284 (b) the above form

may be changed so as to state the charge to be that of "receiving or harbouring" the child "knowing it to have been theretofore taken," etc. Tribunal.—Sessions. Magistrate, on consent. Limitation.—None.

Abduction, Kidnapping: Code 264, as amended by the Statute of 1900, c. 46.—Everyone is guilty of an indictable offence and liable to seven years imprisonment who, without lawful authority—

(a) kidnaps any other person with intent-

(i) to cause such other person to be secretly confined or imprisoned in Canada against his will; or

(ii) to cause such other person to be unlawfully sent or transported out of Canada against his will, or

(iii) to cause such other person to be sold or captured as a slave, or in any way held to service against his will.

(b) forcibly seizes, or confines, or imprisons any other person within Canada.

2. Upon the trial of any offence under this section the non-resistance of the person so unlawfully kidnapped or confined shall not be a defence, unless it appears that it was not caused by threats, duress or force, or exhibition of force.

Form of Charge; (Code 264 (a)).—That A.B., on , at did, without lawful authority, kidnap C.D. with intent to cause the said C.D., against his will, to be secretly confined or imprisoned in Canada, or to be unlawfully sent (or transported), against his will, out of Canada: or to be sold or captured as a slave (or held to service against his will): or that A.B., on , at , did, without lawful authority, seize and confine (or imprison) C.D. within Canada.

Tribunal.—Sessions. Magistrate, on consent. Limitation.—None.

Abortion: Code 272.—Every one is guilty of an indictable offence and liable to imprisonment for life who, with intent to procure the miscarriage of any woman, whether she is or is not with child, unlawfully administers to her or causes to be taken by her any drug or other noxious thing, or unlawfully uses any instrument or other means whatsoever with like intent: R.S.C. c. 162, s. 47.

Form of Charge.—That A.B., on , at , did unlawfully administer to (or cause to be taken by) a woman, to wit, C.D., a drug (or "a noxious thing") to wit (state what the drug or noxious thing was), with intent to procure the miscarriage of the said C.D., or did unlawfully use upon a woman, to wit, C.D., an instrument (or if other means were taken describe them), with intent thereby to procure the miscarriage of the said C.D.

Tribunal.—Sessions. Magistrate on consent.

Limitation.-None.

Abortion, Woman Procuring, on Herself: Code 273.— Every woman is guilty of an indictable offence and liable to seven years imprisonment who, whether with child or not, unlawfully administers to herself or permits to be administered to her any drug or other noxious thing, or unlawfully uses on herself or permits to be used on her any instrument or other means whatsoever with intent to procure miscarriage: R.S.C. c. 162, a. 47.

Form of Charge.—That A.B., a woman, did on unlawfully administer to herself (or permit to be administered to her, the said A.B.) a drug (or a noxious thing), namely, (state what), with intent thereby to procure her misearriage, or did unlawfully use upon herself (or permit to be used on her) an instrument (or if other means are used describe them) with intent, etc., as in the next preceding form.

Tribunal.—Sessions. Magistrate on consent. Limitation.—None.

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Abortion, Supplying Drugs to Procure: Code 274.—Every one is guilty of an indictable offence and liable to two years imprisonment who unlawfully supplies or procures any drug or other noxious thing, or any instrument or thing whatsoever, knowing that the same is intended to be unlawfully used or employed with intent to procure the miscarriage of any woman, whether she is or is not with child: R.S.C. c. 162, s. 48.

Form of Charge.—That A.B., on , at , did unlawfully supply to (or procure) a drug (or a noxious thing, or "an instrument," or if any other thing, name it), the said A.B. then knowing that the same was intended to be unlawfully used or employed, with intent to procure the miscarriage of a woman, to wit, E.F.

Tribunal.—Sessions. Magistrate on consent. Limitation.—None.

Abortion, Killing Unborn Child: Code 271.—Everyone is guilty of an indictable offence and liable to imprisonment for life who causes the death of any child which has not become a human being, in such a manner that he would have been guilty of murder if such child had been born.

2. No one is guilty of any offence who, by means which he in good faith considers necessary for the preservation of the life of the mother of the child, causes the death of any such child before or during its birth. See also Code 219 as to when a child becomes a human being.

Form of Charge.—That A.B., at , on , A.D. 19 , did unlawfully and wilfully, and with malice aforethought, cause the

death of a child of one (C.D.), which was then unborn and which had not then become a human being.

Tribunal.—Sessions. Magistrate on consent. Limitation.—None.

Accessories. - Accessories before or in the act are now a principal, so any one who commits, or by act or omission aids or abets, or procures another to commit an offence, is a principal; the degrees of culpability and the distinction between principal and accessories before the fact being abolished: Code 61; and when several persons form a common intention for an unlawful purpose, and to assist each other therein, all of them are principals in the commission of any offence by one of them in the prosecution of such purpose, the commission of which offence was, or ought to have been known as a probable consequence of the carrying out of such common purpose: Code 61 (2). Anyone who counsels or procures another to be a party to an offence of which the latter is afterwards guilty, is a principal, even if it was committed in a different way to that counselled or suggested: Code 62; and a person who so counsels or procures another is guilty as principal of any offence which the former ought to have known to be likely to be committed in consequence of such counselling or procuring: Code 62 (2); 1 Russ. 175; R. v. Gregory, L.R. 1 C.C.R. 77; R. v. Ransford, 13 Cox, C.C. 9.

Accessories after the Fact.—After an offence has been committed a person who receives, comforts or assists the one who has committed it to escape, knowing such person to have been guilty of such an offence, is an accessory after the fact and liable as such: Code 63.

Accessories: Husband and Wife.—A husband or wife does not become an accessory, nor guilty of any offence, by assisting the other after the fact; nor does a wife become accessory by receiving or assisting in her husband's presence and by his authority, another person who has been a party, with the husband to an offence in order to enable either to escape: Code 63 (3). But a wife acting as accessory before the fact by aiding or abetting in the commission of an offence becomes a principal offender: Code 61, even if she does so in the presence and under the authority of her husband, except in the case of compulsion, as provided for by Code 12; and such compulsion will not be presumed: Code 13; see Hale, P.C. 621.

Advertisements or Circulars in the Likeness of Bank Notes, etc.; Code 442.

Tribunal.—Two justices, summarily.

Limitation. - None. Punishment, \$100, or three months.

Alding and Abetting Treason: Code 67.—See "treason," or murder: see Code 235.

Aiding and Abetting Suicide: Code 2.37.—Every one is guilty of an indictable offence and liable to imprisonment for life who counsels or procures any person to commit suicide, actually committed in consequence of such counselling or procurement, or who aids or abets any person in the commission of suicide.

Accessory after the Fact to Murder: Code 235.—Every one is guilty of an indictable offence, and liable to imprisonment for life, who is an accessory after the fact to murder.

An accessory after the fact may be tried for his offence even if the principal offender has not been indicted or convicted, or is not amenable to justice, or even if the latter is unknown. And he may be tried alone or for the substantive offence jointly with the principal, and whether the latter has been convicted or not: Code 627; see McIntosh v. The Queen, 23 S.C.R. 189; 1 Russ. 6th ed., 189, 190.

Form of Charge (Code 63).—That some person or persons, on at , did unlawfully (state the offence committed by the principal offender), and that the said A.B. (the informant) has just cause to suspect, and does suspect, that C.D. did commit the said offence, and that E.F., at , on , well knowing the said C.D. to have committed the said offence, did afterwards, at the of in the County of , on the day of , A.D. 19 , unlawfully receive (or comfort) the said C.D. (or assist the said C.D.) in order to enable the said C.D. to escape.

Tribunal.—The same as that by which the principal offender may be tried for the particular offence charged. If such is one of those mentioned in Code 540, it cannot be tried before a Magistrate; otherwise he may try the case on consent of the accused.

Limitation.—The same as for the particular offence: see Code 551.

Punishment.—Provided by Code 531, 532.

For form of charge of being accessory after the fact to treason, or neglecting to give information, etc., see Code 67: see "Treason;" see also, as to other cases, Code 531, 532.

Accusing of Crime.—See Extortion.

Administering Drug with Intent: Code 244.—Every one is guilty of an indictable offence and liable to imprisonment for life, and to be whipped, who, with intent thereby to

enable himself or any other person to commit, or with intent thereby to assist any other person in committing any indictable offence—

- (b) Unlawfully applies or administers to, or causes to be taken by, or attempts to apply or administer to, or attempts or causes to be administered to or taken by, any person, any chloroform, laudanum or other stupefying or overpowering drug, matter or thing: R.S.C. c. 162, ss. 15 and 16.
- (a) By any means whatsoever, attempts to choke, suffocate or strangle any other person, or by any means calculated to choke, suffocate or strangle, attempts to render any other person insensible, unconscious or incapable of resistance.

Form of Charge.—That A.B., at , on , A.D. 19 , with intent thereby to enable the said A.B. (or one, C.D.) to (state the indictable offence committed or attempted), to one E.F., did unlawfully apply (or administer, or attempt to apply or administer) to (or cause to be taken by) the said E.F. chloroform (or laudanum, or a stupefying or overpowering drug, matter or thing, stating what it was): Code 244 (b): or, did unlawfully attempt to choke (or suffocate, or strangle) the said E.F.; or, did unlawfully attempt to render the said E.F. insensible (or unconscious, or incapable of resistence) by means of (state the means used) in a manner calculated to choke (or suffocate, or strangle, as the case may be) the said E.F.: Code 244 (a).

Tribunal.—Sessions. Magistrate on consent. Limitation.—None.

Administering Poison so as to Endanger Life: Code 245.—Every one is guilty of an indictable offence and liable to fourteen years imprisonment who unlawfully administers to, or causes to be administered to or taken by any other person, any poison, or other destructive or noxious thing, so as thereby to endanger the life of such person, or so as thereby to inflict upon such person any grievous bodily harm: R.S.C. c. 162, s. 17.

Form of Charge.—That A.B., at , on , A.D. 19, did unlawfully administer (or cause to be administered) to (or cause to be taken by) C.D., a poison (or a destructive or noxious thing) namely (state what it was), so as thereby to inflict upon the said C.D. grievous bodily harm (or endanger the life of the said C.D.).

Tribunal.—Magistrate on consent. Limitation.—None.

Administering Poison With Intent to Injure: Code 246.

Every one is guilty of an indictable offence and liable to three years imprisonment who unlawfully administers to, or causes to be administered to or taken by any other person any poison or other destructive or noxious thing, with intent to injure, aggrieve or annoy such person.

Form of Charge.-That A.B., at did unlawfully administer (or cause to be administered to, or to be taken by) C.D., a poison (or a destructive or noxious thing, namely (state what if was), with intent thereby to injure (or to aggrieve, or to annoy) the said C.D.

Tribunal. - Magistrate on consent.

Limitation.-None.

Adulteration of Food, Etc.

(Food): R.S.C. c. 107; 53 V. c. 26 (D.).

(Milk): Ib.

(Butter): R.S.C. c. 100.

(Cheese): 56 Vict., e. 37 (D.).

(Honey): 59 Viet, e. 12 (D.).

(Drugs): B.S.C. c. 107; 53 Vict., c. 26 (D.).

(Fortilizers): R.S.C. c. 107; R.S.C. c. 108; 53 Viet., c. 24 (D).

Affray: Code 90 .- An affray is the act of fighting in any public street or highway, or fighting to the alarm of the public in any other place to which the public have access.

2. Every one who takes part in an affray is guilty of an indictable offence and liable to one year's imprisonment with hard labour: R.S.C. c. 147, s. 14.

Form of Charge. - That A.B. and C.D., at unlawfully make an affray by fighting on a public street (or highway)—or—by fighting to the alarm of the public in (state the place), being a place to which the public then had access.

Tribunal.—Sessions. Magistrate on consent.

Limitation. - None.

Anatomy. -- Act of Ontario, R.S.O. c. 177. See also Dead Body.

Animals, Offences in Respect Of. -- Code 512, s.-s. (a) provides against ill-usage of domestic animals and birds.

(b) Against injuries to cattle or other animals by negligence or ill-usage while driving them.

(c) Against cock-fighting, and fighting or baiting any animals, whether of domestic or wild nature.

Code 513.—Against keeping cockpit.

Code 514.—Respecting unloading for rest, and feeding and watering animals in transit, and providing a penalty on summary conviction before a justice for breach of this section.

Code 515.- Empowering peace officer to enter any car, vehicle or vessel when he has reason to suspect a breach of the provisions of Code 514, and providing a penalty on summary conviction before a justice against any one refusing admission.

In prosecutions for cruelty to animals, half the penalty goes to the municipality, and the other half to such person as to the justice seems proper: R.S.C. 172, a. 7, in App. to Cr. Code.

Tribunal.—Under Code 512 or 513, two justices; under Code 514 or 515, one justice.

Limitation.—Under Code 512 or 513, three months: Code 551 (e); under Code 514 or 515, ib.

Apprentice, Bodily Harm to: Code 217.—Every one is guilty of an indictable offence and liable to three years imprisonment who, being legally liable as master or mistress to provide for any apprentice or servant, unlawfully does, or causes to be done, any bodily harm to any such apprentice or servant so that the life of such apprentice or servant is endangered, or the health of such apprentice or servant has been, or is likely to be, permanently injured: R.S.C. c. 62, s. 19.

Form of Charge.—That A.B., at , on , then being the master of C.D., a servant or apprentice, and being legally liable to provide for the said C.D. as such servant or apprentice, then and there unlawfully did or caused to be done bodily harm to the said C.D., whereby the life of the said C.D. was endangered or the health of the said C.D. has been or is likely to be permanently injured.

Tribunal.—Sessions. Magistrate on consent. Limitation.—None.

Apprentice.— Neglecting to provide necessaries: see "Neglect."

Apprentices and Minors, Offences by or Against.—R.S.O. c. 161.

Arms.—R.S.C. c. 148: see Weapons.

Arson.—Code 481-487: see Fire.

Articles of the Peace: Code 959.—2. Upon complaint by or on behalf of any person that on account of threats made by some other person or on any other account, he, the complainant, is afraid that such other person will do him, his wife or child some personal injury, or will burn or set fire to his property, the justice before whom such complaint is made, may, if he is satisfied that the complainant has reasonable grounds for his fears, require such other person to enter into his own recognizances, or to give security, to keep the peace, and to be of good behaviour, for a term not exceeding twelve months.

3. The provisions of this part shall apply so far as the same are applicable to proceedings under this section, and

the complainant and defendant and witnesses may be called and examined, and cross-examined, and the complainant and defendant shall be subject to costs as in the case of any other complaint.

- 4. If any person so required to enter into his own recognizances or give security as aforesaid, refuses or neglects so to do, the same or any other justice may order him to be imprisoned for any term not exceeding twelve months.
- 5. The Forms W.W.W., X.X.X. and Y.Y.Y., with such variations and additions as the circumstances may require, may be used in proceedings under this section.

See also Code 958, 959, as amended by 56 Vict., c. 32, which authorize magistrates and justices to order a person convicted before them to find sureties to keep the peace. Also Code 960 as to proceedings after a person has been committed to gaol in default of sureties.

Forms of proceedings are given in the schedule to the Criminal Code: Forms W.W.W. of complaint; X.X.X. of recognizance; Y.Y.Y. of warrant to commit on default of sureties.

The case will be heard and all the proceedings will be the same as in summary trials before justices.

That part of the condition in the form of recognizance above given, which provides that the party is to appear at the General Sessions, is to be omitted. The only condition required is that the party shall keep the peace for the term ordered.

Upon the hearing the justice must at once enter his adjudication, or make out his order, and if he requires sureties to be given, must fix the amount and state the term of imprisonment on default. Then on the accused refusing or neglecting to give the security, a further order to commit will be made. A warrant of commitment can only be issued after the defendant's neglect or refusal to furnish sureties, proved and recorded subsequently to the order requiring the security: Re Doe, 3 Can. Cr. Cas. 370.

Assault: Code 258.—An assault is the act of intentionally applying force to the person of another, directly or indirectly, or attempting or threatening, by any act or gesture, to apply force to the person of another, if the person making the threat has, or causes the other to believe, upon reasonable

grounds, that he has, present ability to effect his purpose, and in either case, without the consent of the other, or with such consent if it is obtained by fraud.

As to what may be done in self defence against assaults, see Code 45-47.

Common Assault: Coc. 65, 864, Amended by the Statute of 1900, c. 46.—Every on who commits a common assault is guilty of an indictable offence, and is liable, if convicted upon an indictment, to one year's imprisonment, or to a fine not exceeding \$100; and on summary conviction, to a fine not exceeding \$20 and costs, or to two months imprisonment with or without hard labour: see also Code 864 (a), 865, 866.

Form of Charge.—That A.B., at , am , A.D. 10 , did unlawfully assault (or in once of assault and battery, assault and beat) C.D.

Tribunal.—Sessions. Magistrate or one Justice. Objection does not now out the Justice's jurisdiction; see Amended Code 384.

Limitation.—On summary proceedings under Code 864 the limitation is six months: Code 841. On trial before Sessions or Magistrate as an indictable offence there is no limitation of time.

The jurisdiction to try an assault is ousted if title to land, etc., is 'sed: Code 842 (3); and see ante Chap. IX., sub. nom. "www. 1. land and claim of right."

Indecent Assaults on Females: Code 259.—Every one is guilty of an indictable offence and liable to two years imprisonment, and to be whipped, who—

- (a) indecently assaults any female; or
- (b) does anything to any female by her consent, which but for such consent would be an indecent assault, such consent being obtained by false and fraudulent representations as to the nature and quality of the act: 53 Vict., c. 37, a 12

Code 261.—It is no defence to a charge or indictment for any indecent assault on a young person under the age of 14 years to prove that he or she consented to the act of indecency: 53 Vict., c. 37, s. 7.

Form of Charge.—(a) That on , at , A.B., unlawfully and indecently did assault C.D., a female; or

(b) That on , at , A.B. unlawfully did (state what the act was) to C.D., a female, by her consent, such consent having been obtained by false and fraudulent representations, that the said A.B. was a Medical Practitioner, and that such act was necessary in order to the

medical treatment of the said C.D. by the said A.B. (or as the case may

Tribunal.—Sessions. Magistrate on consent. Limitation.—None.

Indecent Assaults on Males: Code 260.—Every one is guilty of an indictable offence and liable to seven years imprisonment, and to be whipped, who assaults any person with intent to commit sodomy, or who, being a male, indecently assaults any other male person.

Form of Charge.—On , at A.B., a male person, unlawfully and indecently did assault C.D., another male person, or assault C.D. with intent to commit sodomy.

Tribunal.—Bearions. Magistrate on consent. Limitation.—None.

Assaults Causing Actual Bodity Harm: Code 262.— Every one who commits any assault which occasions actual bodily harm is guilty of an indictable offence, and liable to three years imprisonment.

Form of Charge.—That A.B., on .A.D. 19, at , did unlawfully commit an assault upon C.D., and did thereby occasion actual bodily harm to the said C.D.

Tribunal.—Sessions. Magistrate on consent. Limitation.—None.

Assault with Intent to Rob. - See Robbery.

Aggravated Assault: Code 263.—Every one is guilty of an indictable offence and liable to two years imprisonment who—

- (a) assaults any person with intent to commit any indictable offence; or
- (b) assaults any public or peace officer engaged in the execution of his duty, or any person acting in aid of such officer; or
- (c) assaults any person with intent to resist or prevent the lawful apprehension or detainer of himself, or of any other person, for any offence; or
- (d) assaults any person in the lawful execution of any process against any lands or goods, or in making any lawful distress or seizure, or with intent to rescue any goods taken under such process, distress or seizure: R.S.C. c. 162, s. 34.
- (e) on any day whereon any poll for any election, parliamentary or municipal, as being proceeded with, within the

distance of two miles from the place where such poll is taken or held, assaults or beats any person.

Form of Charge.—(a) That on , al , A.B. did unlawfully assault C.D. with intent to commit an indictable offence, namely, (describe the offence intended).

- (b) That on , at , A.B. did unlawfully assault C.D., a public officer (or a peace officer), to wit, a Constable of the said County of , (or as the case may be), then and there engaged in the execution of his duty, to wit, while (describe the duty being performed).
- (c) That on , at , A.B. did unlawfully assault C.D. with intent to resist (or prevent) the lawful apprehension (or detainer) of him the said A.B. (or one C.) for a certain offence, to wit, (state the offence).
- (d) That on , at , A.B. did unlawfully assault C.D. who was then and there, in his quality of a duly appointed bailing of , engaged in the lawful execution of a certain process against (or in the making of a lawful selzure of lands or goods), or with intent to rescue certain goods which had then and there been taken under such process.
- (e) That A.B., on , at , being a day upon which a poil for an election of (a member of the Dominion Parliament or of the Legislative Assembly for the said County, or for Municipal Councillors for the Municipality of), was there being held and proceeded with, did, within a distance of two miles from (state the place), where a poll in the said election was then being taken and held, unlawfully assault (or assault and beat) C.D.

Tribunal.-Sessions. Magistrate on consent.

Limitation.-None.

Assault and Wounding.—See Wounding.

See also Code 783 which gives special jurisdiction to magistrates in the cases of assaults there mentioned.

Assault—Lying in Wait for Persons Returning from Public Meeting: Code 115.— Every one is guilty of an indictable offence and liable to a penalty not exceeding two hundred dollars, or to imprisonment for a term not exceeding six months, or to both, who lies in wait for any person returning, or expected to return, from any such public meeting, with intent to commit an assault upon such person, or with intent, by abusive language, opprobrious epithets or other offensive demeanour, directed to, at or against such person, to provoke such person or those who accompany him, to a breach of the peace.

Form of Charge.—That A.B., at , on , A.D. 19 , did unlawfully lie in wait for C.D., who was then returning (or expected to return) from a public meeting, with intent then and there to commit

an assault upon the said C.D. (or with intent by abusive language opprobrious epithets or other offensive demeanour directed to the said D., to provoke him, or those who accompanied him, to a brench of the

Tribunal.—Sessions. Magistrate on consent, Limitation.-1 year: Code 561 (c).

Assembly, Unlawful: Code 79.—See Riot.

Attempts : Code 528-530, 711, 712.

Form of Charge, -That A.B., at fully attempt (state the offence attempted according to the forms given). , did uniaw-

Bank Act. - False statements in receipts used under Code 378.

Bawdy House; see Disorderly House.

Begging: Code 207 (d).—See Disorderly Conduct.

Bestiality: see Sodomy. Betting: see Gambling.

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Bigamy: Defined and explained by Code 275.

Code 276.—Every one who commits bigamy is guilty of an indictable offence and liable to seven years imprisonment.

(2). Every one who commits this offence, after a previous conviction for a like offence, shall be liable to fourteen years

Form of Charge. - That A.B., on a man (or woman) already married, did unlawfully marry, and go through a form of marriage with another woman (or man), to wit, C.D.

See also Polygamy: Peigned Marriages, infra. Tribunal. - Bessions. Magistrate on consent. Limitation.-None.

Blasphemous Libel: Code 170.—Every one is guilty of an indictable offence and liable to one year's imprisonment who publishes any blasphemous libel: see s.-s. 2, as to permissible argument of opinion on religious questions.

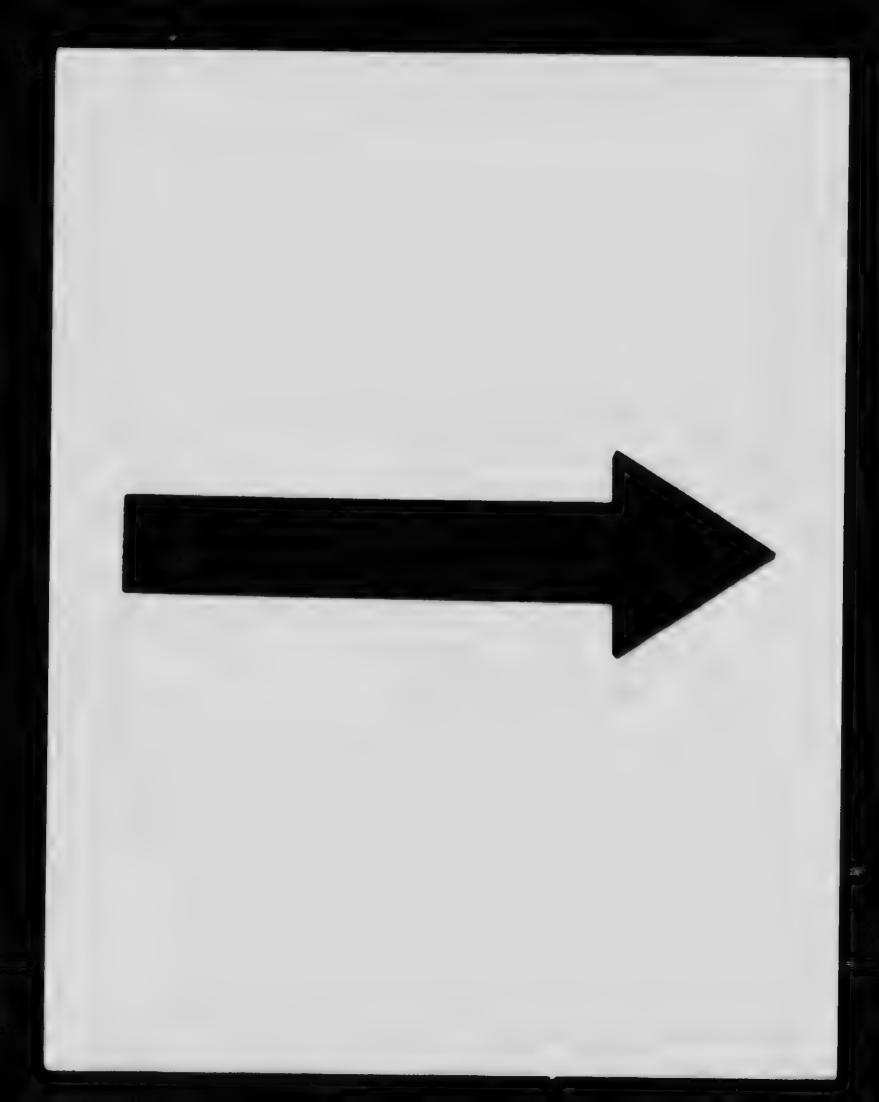
Form of Charge.—That A.B., on A.D. 19, at unlawfully publish (state the manner of publishing) a blasphemous libel, in the words following (state the words of the libel as published).

Tribunal.—Sessions. Magistrate on consent.

Limitation.-None.

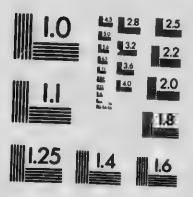
Breaking Prison: see Escape.

Bribery. - Of judicial officer or member of parliament or legislature: see Code 131; of peace or public officers (see



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Code 3 S. and 3 W. for definition): Code 132; of government officer: Code 133, 134, 135; of municipal officers: Code 136; at Dominion elections: R.S.C. c. 8, s. 84.

Tribunal.—Superior Court: justice or magistrate is to hold preliminary enquiry under Part 58 of the Criminal Code.

Limitation.—Under Code 133 or 136, two years. For other offences the time for prosecution is not limited. Prosecutions under Code 131 cannot be brought without the leave of the Attorney-General of Canada: Code 544.

Bribing Jury, etc.: Code 154.—Every one is guilty of an indictable offence and liable to two years imprisonment who—

- (a) dissuades or attempts to dissuade any person by threats, bribes or other corrupt means from giving evidence in any cause or matter, civil or criminal; or
- (b) influences or attempts to influence, by threats or bribes or other corrupt means, any juryman in his conduct as such, whether such person has been sworn as a juryman or not; or
- (c) accepts any such bribe or other corrupt consideration to abstain from giving evidence, or on account of his conduct as a juryman; or
- (d) wilfully attempts in any other way to obstruct, pervert or defeat the course of justice.

Form of Charge.—(a) That A.B., at , on , did unlawfully dissuade (or attempt to dissuade) one C.D. by threats (describe) or bribe (stating it), or by corrupt means, to wit, (describe), from giving evidence in a civil (or criminal) cause (or matter) then pending in , between (style of cause); or

(b) Did influence (or attempt to influence) by (describe the means as in the preceding form), a Juryman, to wit, C.D., then summoned as a Juryman to serve as such at the General Sessions of the Peace, then to be held at , in and for the County of , (or as the case may be), in his conduct as such Juryman; or

(c) That A.B., at , on , did unlawfully accept a bribe, to wit, (or any other corrupt consideration stating it), to abstain from giving evidence in a certain matter (or cause) then pending in , or on account of his conduct as a Juryman at ; or

did unlawfully attempt to obstruct (or pervert, or defeat) the course of justice by (stating the corrupt means used).

Tribunal.—Superior Court: a justice or magistrate will hold a preliminary enquiry.

Limitation,-None.

Burglary: For definitions of terms, and what is burglary: see Code 407.

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Burglary of Dwelling: Code 410.—Every one is guilty of the indictable offence called burglary, and liable to imprisonment for life, who—

(a) breaks and enters a dwelling-house by night with intent to commit any indictable offence therein; or

(b) breaks out of any dwelling-house by night, either after committing an indictable offence therein, or after having entered such dwelling-house, either by day or by night, with intent to commit an indictable offence therein.

By s.-s. 2 added to this section by the Act of 1900, whipping may be added as part of the punishment, if the person convicted had an offensive weapon in his possession when arrested or when he committed the offence.

Code 411.—Every one is guilty of the indictable offence called housebreaking, and liable to fourteen years imprisonment, who—

(a) breaks and enters any dwelling-house by day and commits any indictable offence therein; or

(b) breaks out of any dwelling-house by day after having committed an indictable offence therein.

Code 413.—Every one is guilty of an indictable offence and liable to seven years imprisonment who, by day, breaks and enters any dwelling-house with intent to commit any indictable offence therein.

Form of Charge: Code 410.—(a) That A.B., at , on A.D. 19 , by night, to wit, at the hour of o'clock in the noon, unlawfully and burglariously did break and enter the dwelling-house of C.D., there situated, with intent unlawfully to commit, in the said dwelling-house, an indictable offence, to wit (state the offence committed).

Code 410 (b).—That A.B., at , on , A.D. 19 , did by night, to wit, at the hour of o'clock in the noon, unlawfully committed an indictable offence therein, to wit (state the offence), or after having unlawfully entered the said dwelling-house with intent to commit an indictable offence therein to wit, (state the offence.) If the accused had a weapon in his possession add an averment to that effect.

Code 411 (a).—That A.B., at , on , A.D. 19 , did unlawfully break and enter by day the dwelling-house of C.D., there dwelling-house, to wit (state the offence).

Code 411 (b).—Follow the next preceding form, substituting the words "break out of the dwelling-house of C.D., there situated, after having committed," etc.

Code 412.—That A.B., at , on , did unlawfully by day break and enter the dwelling-house of C.D., there situated, with intent to commit an indictable offence therein, to wit (state the offence).

Being Found in Dwelling-House by Night: Code 415.— Every one is guilty of an indictable offence and liable to seven years imprisonment who unlawfully enters, or is in, any dwelling-house by night with intent to commit any indictable offence therein.

For second offence, the punishment is fourteen years: Code 418; see Code 628.

Form of Charge.—That A.B., at , on , did unlawfully by night enter (or was by night unlawfully in) the dwelling-house of C.D. there situated, with intent to commit an indictable offence therein, to wit, (state the offence), e.g., unlawfully to steal the goods and chattels of the said C.D.

Being Found Armed with Intent to Break a Dwelling-House: Code 416.—Every one is guilty of an indictable offence and liable to seven years imprisonment who is found—

(a) armed with any dangerous or offensive weapon or instrument by day, with intent to break or enter into any dwelling-house, and to commit any indictable offence therein; or

(b) armed as aforesaid by night, with intent to break into any building and to commit any indictable offence

Second offence, fourteen years: Code 418; and see Code 628.

Form of Charge under Code 416 (a).—That A.B., at , on , was found by day unlawfully armed with a dangerous or offensive weapon (or instrument), to wit, (mention what it was), with intent to break and enter into the dwelling-house of C.D. there situated, and to commit an indictable offence therein, to wit, (describe the offence intended); or

The same form may be used under Code 416 (b), substituting the words "by night" instead of "by day," and "a building" instead of "dwelling-house."

Being Disguised or in Possession of Housebreaking Instruments: Code 417.—Every one is guilty of an indictable offence and liable to five years imprisonment who is found—

(a) having in his possession by night, without lawful excuse (the proof of which shall lie upon him), any instrument of housebreaking; or

(b) having in his possession by day any such instrument with intent to commit any indictable offence; or

(c) having his face masked or blackened, or being otherwise disguised by night, without lawful excuse (the proof whereof shall lie on him); or

(d) having his face masked or blackened, or being otherwised disguised by day, with intent to commit any indictable offence.

Second Offence.—Fourteen years: Code 418; and see Code 628.

Form of Charge.—(a) That A.B., at , on found by night unlawfully, and without lawful excuse, in possession of an instrument of housebreaking, to wit (describe it).

(b) That A.B., at , on , was found by day unlawfully having in his possession an instrument of housebreaking, to wit (describe it), with intent to commit an indictable offence, to wit (burglary, or as the case may be).

(c) That A.B., at , on , was found by night unlawfully, and without lawful excuse, with his face masked (or blackened, or disguised by, stating the manner of the disguise).

(d) That A.B., at , on , was found by day unlawfully having his face masked (or blackened, or disguised by, stating how) with intent to commit an indictable offence, to wit (state the offence intended, such as, to commit an assault upon C.D.).

Tribunal (under Code 410 to 417, inclusive). - Sessions. Magistrate or consent.

Limitation .- None.

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Burglary of Place of Worship: Code 409:—Every one is guilty of an indictable offence and liable to seven years imprisonment who breaks and enters any place of public worship with intent to commit any indictable offence therein.

Code 408.—Every one is guilty of an indictable offence and liable to fourteen years imprisonment who breaks and enters any place of public worship and commits any indictable offence therein, or who, having committed any indictable offence therein, breaks out of such place.

Form of Charge (Code 403.)—That A.B., at , on , did unlawfully break and enter a place of public worship, to wit (describe the place), and therein did commit an indictable offence, to wit (state the offence, for instance did steel; (mention the article) the property of C.D.

That A.B., at on , did unlawfully commit an indictable offence, to wit .ate the offence), in a place of public worship, to wit (name the place), and that after committing the said offence, in the said place of public worship, the said A.B. did then and there unlawfully break out of the said place of public worship.

(Code 409) That A.B., at , on , did unlawfully break and enter a place of public worship (name the place) with intent then and there unlawfully to (state the offence) therein.

Burglary of Shops, Etc.: Code 413.—Every one is guilty of an indictable offence and liable to fourteen years imprisonment who, either by day or night, breaks and enters and commits any indictable offence in a school-house, shop, warehouse or counting house, or any building within the curtilage of a dwelling-house, but not so connected therewith as to form part of it under the provisions hereinbefore contained.

Code 414.—Every one is guilty of an indictable offence and liable to seven years imprisonment who, either by day or night, breaks and enters any of the buildings mentioned in the last preceding section with intent to commit any indictable offence therein.

Form of Charge.—That A.B., at , on , did unlawfully break and enter the shop of C.D. there situated (or any of the other places named, or a building within the curtilage of the dwelling house of the said C.D., there situated), and did then and there commit in the said shop (or other place mentioned) an indictable offence, to wit (state the offence), or with intent to commit therein an indictable offence, to wit (state the offence).

Tribunal.—Sessions. Magistrate on consent.

Limitation .- None.

Breach of Trust, Criminal: Code 363.—Every one is guilty of an indictable offence and liable to seven years imprisonment who, being a trustee of any property for the use or benefit, either in whole or in part, of some other person, or for any public or charitable purpose, with intent to defraud, and in violation of his trust, converts anything of which he is trustee to any use not authorized by the trust. For definition of "trustee:" see Code 3 (bb).

Form of Charge.—That A.B., at , on , he then being a trustee of certain property, namely (describe it), for the use and benefit of C.D. (or as the case may be) under (deed or will or any other written or verbal trust, stating it), unlawfully and with intent to defraud, and in violation of his trust, did convert the said property to a use not authorized by the said trust, to wit, to his own use (or as the case may be).

Tribunal.—Sessions. Magistrate on consent. Limitation.—None.

Breach of the Peace: see Articles of the Peace.

Buggery: see Sodomy.

Cheating at Play: Code 395.—Every one is guilty of an indictable offence and liable to three years imprisonment who, with intent to defraud any person, cheats in playing at any game, or in holding the stakes, or in betting on any event.

Form of Charge.—That A.B., at , on , unlawfully, and with intent to defraud C.D., did cheat in playing at a game with cards (or other game stating it), or in holding the stakes, or in betting on the event of (state the event bet on).

Tribunal.—Sessions. Magistrate on consent. Limitation.—None.

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Childbirth, Neglect to Obtain Assistance In: Code 339.—Every woman is guilty of an indictable offence who, with either of the intents hereinafter mentioned, being with child, and being about to be delivered, neglects to provide reasonable assistance in her delivery, if the child is permanently injured thereby, or dies, either just before, or during, or shortly after birth, unless she proves that such death or permanent injury was not caused by such neglect, or by any wrongful act to which she was a party, and is liable to the following punishment:—

(a) If the intent of such neglect be that the child shall not live, to imprisonment for life;

(b) If the intent of such neglect be to conceal the fact of her having had a child, to imprisonment for seven years.

Form of Charge.—That A.B., at , on , she being then with child, and about to be delivered thereof, unlawfully did neglect to provide reasonable assistance in her delivery, whereby the child of which she was then delivered was permanently injured (or died just before or during, or shortly after, birth), the intent of such neglect being that the child should not live, (or to conceal the fact of the said A.B. having had a child).

Tribunal.—Sessions. Magistrate on consent. Limitation.—None.

Childbirth—Concealing Dead Body of Child: Code 240.— Every one is guilty of an indictable offence and liable to two years imprisonment who disposes of the dead body of any child in any manner, with intent to conceal the fact that its mother was delivered of it, whether the child died before, or during, or after birth.

Form of Charge.—That A.B., at , on intent to conceal the fact that the said A.B. (or one, C.D.) had been delivered of a child, did unlawfully dispose of the dead body of the said child, of which the said A.B. (or C.D.) had been so delivered, by (state the disposition made of the body).

Tribunal.—Sessions. Magistrate on consent. Limitation.—None.

Clergyman, Obstructing an Officiating: Code 171.

Violence to Officiating Clergyman: Code 172.

Form of Charge (Code 171).—That A.B., on , at , by threats (or force) did unlawfully obstruct (or prevent, or endeavour to

obstruct or prevent) C.D., a Clergyman or Minister, in (or from) celebrating divine service in the Church, or Meeting House, or School House (or other place for divine worship, naming or otherwise describing it), or in, or from, the performance of his duty in the lawful burial of the dead in the Churchyard (or Cemetery, or other burial place, naming or describing it).

form of Charge (Code 172).— That A.B., on , at did unlawfully strike, or offer violence, to (or upon a civil process, or under pretence of executing a civil process did arrest) C.D., a Clergyman, who was then engaged in, or to the knowledge of the said A.B. was then about to engage in (proceed as in previous form).

Tribunal.—Sessions. Magistrate on consent. Limitation.—None.

Communicating Information Acquired by Holding Office: see Code 78.—The prosecution can only be brought on the consent of the Attorney-General for Canada: Code 543.

Compounding Penal Actions: Code 155.—Every one is guilty of an indictable offence and liable to a fine not exceeding the penalty compounded for, who, having brought, or under colour of bringing, an action against any person under any penal statute in order to obtain from him any penalty, compounds the said action without order or consent of the court, whether any offence has in fact been committed or not.

Form of Charge.—That A.B., at , on , having theretofore brought an action in (state in what court), against C.D., in order to obtain from him a penalty under a penal statute, namely (state what statute), did unlawfully compound the said action without the order or consent of the said Court.

Tribunal.—Sessions. Magistrate on consent.

Concealment of Birth: see Childbirth.

Conspiracy to Bring False Accusation: Code 152.

Form of Charge.—That A.B. and C.D., at , on , did unlawfully conspire together to prosecute E.F. for an alleged offence, to wit, upon a faise charge and accusation that he, the said E.F., had then lately, unlawfully (state the offence falsely charged), they, the said A.B. and C.D., then knowing the said E.F. to be innocent of the said alleged offence.

Tribunal.—Sessions. Magistrate on consent. Limitation.—None.

Conspiracy to Defile a Woman. Code 188.

Form of Charge.—That A.B., on , at , unlawfully did conspire with C.D., by false pretences (or false representations, or other fraudulent means stating them), to induce E.F., a woman, to commit adultery (or fornication).

Tribunal.—Sessions. Magistrate on consent. Limitation.—None.

Compiracy to Commit an Indictable Offence: Code 527.

Form of Charge.—That A.B., at , on , did unlawfully conspire with C.D. to commit an indictable offence, to wit, the crime of (describe the crime, with particulars).

Tribunal. - Sessions. Magistrate on consent. Limitation. - None.

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Conspiracy in Restraint of Trade: Code 516.—See Trade, illegal combinations in restraint of.

Conspiracy to Defraud: Code 394.—Every one is guilty of an indictable offence and liable to seven years imprisonment who conspires with any other person, by deceit or falsehood or other fraudulent means, to defraud the public or any person, ascertained or unascertained, or to affect the public market price of stocks, shares, merchandise, or anything else publicly sold, whether such deceit or falsehood or other fraudulent means would or would not amount to a false pretense as hereinbefore defined.

Tribunal.—Sessions. Magistrate on consent. Limitation.—None.

Conspiracy to Commit a Treasonable Offence: Code 66, 69.

Conspiracy to Intimidate a Legislature: Code 70.

Conspiracy to Murder: Code 234.

Conspiracy—Provisions as to Forms of Charges: Code 616 (2).

Counterfeiting Coins. etc.—Every one is guilty of an indictable offence and liable to imprisonment for life who is guilty of any of the offences mentioned in Code 462.

Form of Charge.—(a) That A.B., at , on , did unlawfully make (or begin to make) a counterfeit coin resembling, or apparently intended to resemble or pass for a current one dollar gold coin (or silver half-dollar coin, or silver ten cent coin); or

(b) Did gild or silver a coin resembling, or apparently intended to resemble or pass for a current one dollar gold coin, or silver fifty cent coin, or silver ten cent coin.

Counterfeit Coin, Dealing in or Importing: Code 463,— Every one is guilty of an indictable offence and liable to imprisonment for life who, without lawful authority or excuse the proof whereof shall lie on him, deals in or imports counterfeit coins as mentioned in this section.

Form of Charge: (Under Code 463 (a)).—That A.B., at om , did unlawfully and without lawful authority or excuse

buy, or sell, or receive, or pay, or put off (or offer to buy, etc.), a counterfeit coin resembling, or apparently intended to resemble, or pass for a current gold or silver coin, to wit, (describe the coin), at and for a lower rate and value than the same imported, (or was apparently intended to import).

Under Code 465 (b).—That, etc., did unlawfully and without lawful authority, or excuse import and receive into Canada, a counterfeit coin resembling, or apparently intended to resemble or pass for a current gold or silver coin, to wit (describe the coin), he then knowing the same to be counterfeit.

Tribunal.—Sessions. Magistrate on consent. In any case under Code 462 or 463;

Limitation,-None.

Code 464.—Every one who manufactures in Canada any copper coin, or imports into Canada any copper coin, other than current copper coin, with the intention of putting the same into circulation as current copper coin, is guilty of an offence and liable, on summary conviction, to a penalty not exceeding twenty dollars for every pound Troy of the weight thereof; and all such copper coin so manufactured or imported shall be forfeited to His Majesty.

Tribunal.—By justice or magistrate summarily without consent. Limitation.—Six months: Code 841.

Exportation of Counterfeit Coin: Code 465.

Form of Charg..—That A.B., at , on , did unlawfully and without lawful authority or excuse export from Canada a counterfeit coin resembling, or apparently intended to resemble, or pass for, a current coin, to wit, (describe the coin), he then knowing the same to be counterfeit.

Making Instruments for Coining: Code 466.—Every one is guilty of an indictable offence and liable to imprisonment for life who, without lawful authority or excuse, the proof whereof shall lie on him, makes or mends, or begins or proceeds to make or mend, or buys or sells, or has in his custody or possession any of the instruments of coining mentioned.

Form of Charge.—(a) That A.B., at , on , did unlawfully and without lawful authority or excuse make or mend, or begin or proceed to make or mend, or buy or sell, or had in his custody or possession, one puncheon (describe the instrument), in or upon which there was then made and impressed, or which would make and impress, or which was adapted and intended to make and impress the figure, or stamp or apparent resemblance, of both, or one of the sides, of a current gold or silver coin, to wit, (describe the coin); or

(b) did, etc., (as above), make, etc., (as above), one edger (or as the case may be), adapted and intended for the marking of coin around the edges, with letters, or graining, or other marks or figures apparently

resembling those on the edges of a current gold or silver coin, to wit, (describe the coin), he then knowing the same to be so adapted and intended.

(c) A form of charge under s.-s. (c) may be framed from the above

Bringing Instruments for Coining from Mints Into Canada: Code 467.

Form of Charge.—That A.B., at , on , did unlawfully and without lawful authority or excuse, knowingly convey out of Him Majesty's mints into Canada one puncheon (or av the case may be, describing the instrument), used or employed in or about the coining of coin, (or any useful part of the above mentioned articles, raming it, or any coin building, metal or mixture of metals).

Clipping Current Gold or Silver Coin: Code 468.— Every one is guilty of an indictable offence and liable to fourteen years imprisonment who impairs, diminishes or lightens any current gold or silver coin, with intent that the coin so impaired, diminished or lightened may pass for current gold or silver coin.

Form of Charge.—That A.B., at , on , did unlawfully impair (or diminish or lighten) a current gold or silver coin called a one dollar gold coin, or a fifty cent or ten cent silver coin, with intent that the said piece so impaired (or diminished or lightened) might pass for a current gold or silver coin.

Defacing Current Coins: Code 469.—Every one is guilty of an indictable offence and liable to one year's imprisonment who defaces any current gold, silver or copper coin by stamping thereon any names or words, whether such coin is or is not thereby diminished or lightened, and afterwards tenders the same.

Form of Charge.—That A.B., at , on , did unlawfully deface one current gold or silver or copper coin, to wit (describe the coin) by stamping thereon certain names or words, to wit (describe), and did afterwards unlawfully tender the same.

That A.B., at , on , did unlawfully utter a coin, to wit (describe it), which had thentofore been defaced by having stamped thereon certain names or words, to wit (state the words).

Possessing Clippings of Current Coin: Code 470.

Form of Charge.—That A.B., at , on , unlawfully had in his possession, or custody, certain filings, or cilippings, or certain gold, or silver bullion, or certain gold, or silver, in dust, or solution (or otherwise), which were produced or obtained by inpairing, or diminishing, or lightening any gold or silver coin, he then knowing the same to have been so produced or obtained.

Possessing Counterfeit Coins: Code 471.

Form of Charge.—That A.B., at , on , unlawfully had in his sustedy, or possession, one counterfeit coin resembling, or

apparently intended to resemble or pass for a current gold or silver coin, to wit, (describe it), with intent to utter the same, he then knowing the same to be counterfeit;

Had in his custody, or possession, three pieces of counterfeit coin resembling, or apparently intended to resemble or pass for current copper coins called one cent pieces, with intent to utter the same, he then knowing the same to be counterfeit.

Counterfeiting or Dealing in Counterfeit C oper Coins: Code 47.2.

Form of Charge... The foregoing forms respecting the counterfeiting of gold or silver coins (Code 462 (a), and making instruments for coinage, and for dealing in counterfeit coins may be adapted.

Offences Respecting Foreign Coins: Code 473.

Form of Charge.—T sat A.B., at , on , did unlawfully make, or begin to make, a counterfeit coin resembling, or apparently intended to resemble, or pass for a gold or silver coin of a foreign country, to wit, the gold or silver coin (name the country), called (name the coin),

The forms of other offences covered by this section may readily be adapted for the foregoing forms.

Uttering Counterfeit Gold or Silver Coins: Code 474.— Every one is guilty of an indictable offence and liable to fourteen years imprisonment who utters any counterfeit coin resembling, or apparently intended to resemble, or pass for, any current gold or silver coin, knowing the same to be counterfeit.

Form of Charge.—That A.B., at , on , did unlawfully ther to C.D. a counterfeit coin resembling, or apparently intended to resemble, and pass for, a current gold or silver coin called (describe the coin), he, the said A.B., then knowing the same to be counterfeit.

Uttering Light Coins, Medals, Counterfeit Copper Coins, etc.: Code 475.

Forms of Charges.—(a) That A.B., at , on , did unlawfully utter as being current a certain silver coin, to wit, a silver dollar of less than its law ul weight, he, the said A.B., then well knowing the said coin to have been impaired, (or "diminished" or "lightened") otherwise than by lawful wear.

(b) That A.B., at , on , unlawfully, and with intent to defraud, did utter, as being a current silver dollar, a certain silver coin, not being a current silver coin, but resembling in size, figure, and colour a current silver dollar, and being of less value than a current silver dollar.

(c) That A.B., at , on , unlawfully, and with intent to defraud, did utter, as being a current silver dollar, a certain medal (or "piece of metal"), resembling, in size, figure, and colour, a current silver dollar, and being of less value than a current silver dollar.

(d) That A.B., at , on , did unlawfully utter to B., one piece of counterfeit coln resembling (or "apparently intended to

resemble and pass for '') the current copper coin called one cent, he, the said A.B., then well knowing the same to be counterfeit.

Tribunal .- (For any offence under Code 465 to 475 inclusive) .--

Limitation. - None.

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Uttering Defaced Coin: Code 476.—Every one who utters any coin defaced by having stamped thereon any names or words, is guilty of an offence and liable on summary conviction before two justices of the peace, to a penalty not exceeding ten dollars: see also R.S.C. c 167, ss. 23-34, which is still in force; see Sched. 2 to Cr. Code.

Tribunal.—Two justices summarily without consent. Limitation.—Bix mouths: Code 841.

Uttering Uncurrent Copper Coins: Code 477.—Eve one who utters, or offers in payment, any copper coin, other than current copper coin, is guilty of an offence and liable on summary conviction, to a penalty of double the nominal value thereof, and in default of paymen' in such penalty to eight days imprisonment.

Form of Charge.—That A.B., at on , did unlawfully and with intent to defraud utter, or offer in payment a copper coin, other than current copper coin, to wit (describe the coin).

Tribunal.—One justice summarily without consent. Limitation.—Six months: Code 841.

Coinage Offences, Punishment After Previous Conviction: Code 478.

Clerks and Servants.—Destroying or making false entries in employer's books, etc.: Code 367; see False Accounting by Clerks.

Counterfeiting Money. Advertising, etc.: Code 479, as amended by the Act of 1900, 480.— Every one is guilty of an indictable offence, and liable to five years imprisonment who,

- (a) in any of the ways mentioned advertise, etc., any "counterfeit token of value;"
 - (b) or purchases, or negotiates for same;
- (c) or uses a fictitious name in any of the transactions mentioned.

Form of Charge. That A.B., at , on , did unlawfully rint (or write, or state any other means of advertising, etc., mentioned in Conc 480 (a), a letter, or writing, or circular, or other thing mentioned, stating it)* advertising, or offering, or purporting to advertise, or offer for sale, or loan (or as the case may be, using the words of the statute), or to furnish, or procure, or distribute (as the case may be), any counter-

feit token of value, or a (counterfeit bank note of the bank of, or other thing, naming it), which purported to be a counterfeit token of value.

(Follow the above form to the asterisk * and proceed as follows): giving, or purporting to give, directly, or indirectly, information where, or how, or of whom or by what means, a counterfeit token of value, or a (mention what), which purported to be a counterfeit token of value, might be procured, or had.

Tribunal,—Sessions. Magistrate on consent. Limitation.—None.

See Code 642 as to evidence in coinage offences; 693, in prosecutions for advertising counterfeit money; 460, 461, 479 (in the Criminal Code Amendment Act, 1900) for definitions of terms; 528, as to previous convictions; 539, as to search warrants; also R.S.C. c. 167, ss. 29-31, in appendix to Criminal Code.

Counterfeiting Revenue Stamps: Code 435.—This section provides for the punishment by fourteen years imprisonment for any of the various indictable offences therein mentioned, in relation to revenue stamps.

The following is a Form of Charge for one of such offences:

Form of Charge.—That A.B., at , on , did unlawfully and fraudulently conterfeit a stamp used for the purposes of revenue by the Government of the United Kingdom of Great Britain and Ireland (or of the Government of Canada, or of the Government of the Province of , or any possession v- colony of His Majesty, or any foreign state, naming it), to wit, a two-cent postage stamp of the Dominion of Canada (or as the case may be).

Tribunal.—Sessions. Magistrate on consent. Limitation.—None.

Counterfeiting Public Seals. or Seals of Courts, etc.: Code 425-426.

Concealing Incumbrances, etc., by Seller or Mortgagor: Code 370.—See Fraudulent Concealment.

Convicts, Offences by: Code 955, Amended by the Act of 1900, c. 46.

Creditors, Defrauding: Code 354.—See Fraud on Creditors.

Cruelty to Animals. -See Animals.

Crops, Setting Fire to.—See Fire.

Damage.—See Injuries; Wilful Damage.

Dead Human Body, Misconduct respecting: Code 206.— Every one is guilty of an indictable offence and liable to five years imprisonment who-

- (a) without lawful excuse, neglects to perform any duty either imposed upon him by law or undertaken by him with reference to the burial of any dead human body or human
- (b) improperly or indecently interferes with or offers any indignity to any dead human body or human remains, whether buried or not.

Form of Charge.-That A.B., on fully, and without lawful excuse, neglect to perform a duty imposed upon h m by law with reference to a dead human body, to wit, to bury the dead

Defamatory Libel, known to be false: Code 301.

For definition, and principles of the law bearing on defamatory libel, see ss. 285-299, and amendment of Code 285, by the Criminal Code Amendment Act, 1900.

Form of Charge. - That A.B., at of or state any other means of published at the libel in relation to C.D., in the words following, namely, (set out the libel), he, the said A.B., then knowing the same to be false.

Punishment, two years imprisonment or two hundred dollars fine, or both.

Defamatory Libel, other than that above mentioned: Code 302. The form will be the same as the next preceding one, omitting the statement that the accused knew the libel to be

Tribunal .- Under Code 301 or 302 Superior Court only. Justice or Magistrate to hold preliminary enquiry: see Code 540. Limitation .- None.

Defamatory Libel, Extortion by: Code 300 .- See Extortion.

Defrauding Creditors.—See Fraud.

Disturbing Public Worship, or any assemblage of persons met for any moral, social, or benevolent purpose: Code 173.

Form of Charge. - That A.B., at disturb, or interrupt, or disquiet, an assemblage of persons then met together at (name and describe the church, hall, or house where the meeting was), for religious worship, or for a moral, or social or benevolent purpose, by profane discourse, or by rude or indecent behaviour, or by making a noise, within the said place of such meeting, (or so near the

said place of such meeting as to disturb the order or the solemnity of the said meeting), then and there being so held.

Tribunal.-A justice or magistrate, summarily.

Limitation.—Six months: Code 641. Punishment, \$50 and costs, in default one month's imprisonment.

Code 198.—Every one is guilty of an indictable offence and liable to one year's imprisonment who keeps any disorderly house, that is to say, any common bawdy house, common gaming house or common betting house, as hereinbefore defined.

2. Any one who appears, acts, or behaves as master or mistress, or as the person having the care, government or management, of any disorderly house shall be deemed to be the keeper thereof, and shall be liable to be prosecuted and punished as such, although in fact he or she is not the real owner or keeper thereof.

Form of Charge.—That A.B., at , on , unlawfully did keep and maintain a disorderly house, to wit, a common bawdy house, by keeping and maintaining a certain house or room, situate , for purposes of prostitution.

or

That A.B., at , on , did unlawfuil; heep and maintain a disorderly house, to wit, a common gaming house, by keeping and maintaining for gain a certain house, or room situate at , to which persons then resorted for the purpose of playing at games of

Tribunal.—Sessions. Magistrate on consent.

Code 783 in the Act of 1895, c. 40, gives summary jurisdiction to two justices, as well as to a magistrate, to try summarily without consent the offences mentioned in Code 783 (f), of keeping, or being an inmate, or habitual frequenter of a disorderly house, house of ill-fame or bawdy house. Punishment, fine of not more than \$100 or six months imprisonment or both: Code 788.

The same ss. 783, 788, also give summary jurisdiction to a magistrate over offences mentioned in s.-ss. (f), (g), (h), (i); and applies the same punishment.

For definitions: see Code 195, 196, 197, 207 (i); search warrants, Code 574, 575, as amended by 57-58 Vict., c. 57; destruction of gaming articles, ib.

Code 199 provides for the summary trial before two justices, and a fine of \$20 to \$100 for the offence of playing, or

looking or at play, in a common gaming house. Limitation of time for resecution, six months: Code 841.

As to evidence of character of house: R. v. Macnamara, 20 O.R. 489; R. v. St. Clair, 27 A.R. 308; and as to gaming house: Code 702, 703, amended by the Act of 1900.

Domestic Animals.—Theft of, Code 332, 333. See Theft.

Driving Furiously: see Furious Driving.

Drugging to Procure Abortion.—See Abortion.

Drugging Woman or Girl with Intent to have Carnal Connection: Code 185 (i).

Form of Charge.—That A.B., at , on fully apply (or administer) to (or cause to be taken by) C.D., a woman, or girl, a drug (or intoxicating liquor, or any matter or thing, describing enable the said A.B. (or any person) to have unlawful carnal connection with the said C.D.

Tribunal.—Sessions. Magistrate on consent. Limitation.—None.

Drugging with Intent to Commit any Indictable Offence: Code 244.—See Administering Drug with Intent.

Drugs, Offering to Sell, Having for Sale, or Advertising Medicines, etc., to Procure Abortion, etc.: Code 179, as Amended by the Act of 1900.

Form of Charge.—That A.B., at , on , unlawfully offered for sale, or advertised, or published an advertisement of, or had intended, or represented, as a means of preventing conception, or causing of abortion or miscarriage.

See further provisions and exception in s.-ss. 2, 3.

Tribunal.—Sessions. Magistrate on consent.

Limitation .- None.

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Drugging with Intent to Commit an Indictable Offence.—See Administering Drugs.

Duel, Challenge to fight a: Code 91.

Form of Charge.—That A.B., at , on , did unlawfully challenge (or endeavour by, state the means used, to provoke) C.D. to fight a duel (or did unlawfully endeavour to provoke C.D. to challenge

Tribunal.—Sessions. Magistrate on consent.

Limitation,-None.

Punishment. - Three years.

Drunkenness is not by any statute, made a criminal offence, unless accompanied by disorderly conduct affecting the public, in which case it is an offence, whether in a public place or in a man's own house: R. v. Blakely, 6 P.R. 244; R. v. Daly, 24 C.L.J. 157; Ex p. Despatie, 9 L.N. 387; Martin v. Pridgeon, 1 Fl. & El. 778; Soder v. Cray, 7 L.T.N.S. 324; Re Livingstone, 6 P.R. 17. But see Mun. Act, R.S.O., c. 223, s. 549, as to by-laws against drunkenness.

Drunk and Disorderly.—See Disorderly Conduct: Code 207 (f).

Disorderly Conduct, or Vagrancy: Code 207.

- (a) Form of Charge.—That A.B., at , on , not having any visible means of subsistence, was found unlawfully wandering abroad, or was found lodging in a barn, or outhouse, or in a deserted or unoccupied building, or in a eart or waggon (or as otherwise stated in Code 207 (a) as amended by the Criminal Code Amendment Act, 1900); or
- (b) Being able to work and thereby (or by other means, stating them) to maintain himself and family, wilfully and unlawfully refused or neglected to do so (see also Code 209 et seq.); or
- (c) Unlawfully did openly expose or exhibit in a street, or road, or highway, or public place, to wit, (state the place), an indecent exhibition (see infra Indecent Exhibitions); or
- (d) Was unlawfully wandering about and begging, or did unlawfully go from door to door, or place himself in a street, or highway, or passage, or public place, to wit, (name it), to beg or to receive alms, without a certificate signed within six months, by a Priest, or Clergyman, or Minister of the Gospel, or two Justices of the Peace, as by law required; or
- (e) Did unlawfully loiter on a public street, or road, or highway, or public place, to wit, (describe where), and obstruct passengers by standing across the footpath, or by using insulting language, to wit, (state the language used) or (state any other way by which any passenger on the way was obstructed); or
- (f) Did unlawfully cause a disturbance in or near any street, or road, or highway, or public place (describing it), by screaming, or swearing, or singing, or by being drunk, or by impeding or incommoding peaceful passengers (see Drunkenness).—(Note: The gravamen of this charge is causing a disturbance by any of the means stated); or
- (g) By discharging firearms, or by riotous, or disorderly conduct, to wit, by (describe it) in a street, or highway, in the said of wantonly and unlawfully disturbed the peace and quiet of the inmates of the dwelling-house of C.D., situate near the said street or highway; or
- (h) Did unlawfully tear down or deface a sign, or break a window, or a door, or a door-plate, or the wall of a house, or of a road, or of a garden, or destroyed a fence (describing where any of these things was)—(see also Wilful Damage); or
- (i) Being a common prostitute, or night-walker, wandered in the fields adjacent to the of , or in the public streets, or highways, or lanes, or places of public meetings, or gathering of people, and upon demand being thereupon made of her by a peace officer of the said of , she did not give a satisfactory account of herself; or

(j) Was unlawfully a keeper, or inmate of a disorderly house, or bawdy-house, or house of ill-fame, or house for the resort of prostitutes

(k) Was unlawfully in the habit of frequenting disorderly houses, or bawdy-houses, or houses of ill-fame, or houses for the resort of prostitutes, and upon being required by a peace officer, did not give a satis-

(1) Having no peaceable profession or calling to maintain himself by, for the most part supports himself by gaming, or by crime, or by

"Public place" is defined by 57-58 Vict., c. 57.

Tribunal. - A justice has summary jurisdiction over any of the above offences: see amendment by 57-58 Viet., c. 57.

Limitation .- Six months: Code 841.

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Punishment. - Fifty dollars fine or six months imprisonment, or both: (Code 208); or commitment to any house of industry or reformatory prison: R.S.C. c. 57, s. 8, as to which see Aprendix Code.

Code 208, exempts from the provisions of Code 207 (a), aged or infirm persons resident in the county for the preceding two years. As to search warrants for vagrants, see Code 576, and "Search Warrants" supra.

Several of the above offences are also covered by municipal by-laws, under which the prosecution may be taken.

Election Documents, Ballots, Poll Book, Etc., in Dominion, provincial, municipal or civic elections - offences respecting: Code 503. Indictable.

Form of Charge.-That A.B., at Form of Charge.—That A.B., at , on . did unlawfully d wilfully destroy (or as in Code 50% (a): or made or caused to be made an addition of names (or as in Code 503 (b): in or upon) a writ of election, or baliot or voters' list (or other election document as stated in Code 503), made, or prepared or drawn out according to the "Dominion Elections Act" (or as the case may be). in an election for a member of the House of commons of Canada, for the Electoral District of the (or as the case may be), held on the , A.D. 19

Tribunal. - Sessions. Magistrate on consent.

Limitation .- None.

Punishment.—Seven years. S Election Documents: "Code 329, See also "Theft of, or Unlawfully Taking

Embezzlement.—See Theft.

Embracery.—See Bribing Jury, etc.

Escapes and Rescues: Breaking Prison: Code 161.-Every one is guilty of an indictable offence and liable to seven years imprisonment who, by force or violence, breaks any prison with intent to set at liberty himself or any other person confined therein on any criminal charge.

Form of Charge. - That A.B., at violence) did unlawfully break a prison, to wit, the common gaol of the County of , with intent to set at liberty himself, the said A.B. (or one, C.D.) he, the said A.B. (or C.D.) then being a person confined in the said prison on a criminal charge, to wit, (state the charge).

Attempting to Break Prison: Code 162.—Every one is guilty of an indictable offence and liable to two years imprisonment who attempts to break prison, or who forcibly breaks out of his cell, or makes any breach therein with intent to escape therefrom.

Form of Charge.—That A.B., at , on the , A.D. 19 , then being a prisoner confined in the common gaol or prison at on a criminal charge, dld unlawfully attempt to break the said prison (or forcibly break out of his cell in the said prison, or make a breach in his cell in the said prison) with intent to escape therefrom.

Escape from Custody, Either before or after conviction: Code 163, 164.

Form of Charge: Code 163 (a).—That A.B., at , on , having theretofore, to wit, on the day of A.D. 19 , been lawfully convicted of the offence (state the offence), and being on the day and at the place first above mentioned, in lawful custody under such conviction, to wit, in the common gaol in the County of (or in charge of a peace officer by whom he was then lawfully being conveyed to prison), under a lawful war ant issued upon such conviction, did unlawfully escape from such custody.

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Code 163 (b).—That A.B., at , on , being then and there lawfully confined in a prison, to wit, the common gaol of the County of , on a criminal charge, to wit (state the charge), did unlawfully escape from the said prison.

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Code 164.—That A.B., at , on , being then and there in lawful custody of a peace officer of the County of , on a criminal charge, to wit (state the charge), did unlawfully escape from such custody.

Escape; Rescue or Assisting; or peace officer voluntarily and intentionally permitting escape: Code 165, 166.

Form of Charge: Code 165 (a).—That A.B., at on , did unlawfully rescue C.D. (or assist C.D. in escaping, or attempting to escape from lawful custody under sentence of death (or of imprisonment for life) upon a criminal charge, to wit (describe the crime).

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To escape from lawful custody after conviction and b tore sentence, upon a charge of a crime punishable with |death, or punishable with imprisonment for life, to wit (describe the crime).

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Code 165 (b).—That A.B., at , on , then being a peace officer, and having one C.D. in his lawful custody as such (or he then being an officer, to wit, the keeper or a guard, or tankey of a prison, to wit, the common gaol of the County of , in which

C.D was then and there lawfully confined), under sentence of death (or imprisonment for life) upon a criminal charge of (state the charge), he, the said A D., did then and there unlawfully and voluntarily and intentionally permit the said C.D. to escape.

Code 166.—Similar forms to the foregoing are applicable under this section to the charge of rescuing, or assisting in the escape, or against a peace officer for voluntarily permitting the escape of a person charged with an offence punishable with imprisonment for a less term than for

Escape-Peace Officer Permitting by Neglect of Duty: Code 166 A. in the Criminal Code Amendment Act, 1900.

Form of Charge.-That A.B., at Peace Officer, and as such having then and there in his lawful custody one C.D. on a criminal charge, to wit (state the charge), did unlawfully and by failing to perform a legal duty then imposed upon him, the said A.B., in the premises, to wit, by (state the neglect or failure of duty of the cheer), permit the said C.D. to escape from such custody.

Tribunal.—Sessions. Magistrate on consent.

Limitation .- None.

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f a ich Punishment. - One year's imprisonment.

Escape—Aiding Escape from Prison: Code 167.

Form of Charge.—That A.B., at , on , unlawfully and with intent to facilitate the escape of C.D., a prisoner lawfully did convey imprisoned in the common gaol of the County of (or cause to be conveyed) a certain (state the article) into the said prison.

Unlawfully Procuring a Prisoner's Discharge: Code 168.

Convict Being at Lurge Before Expiration of Sentence: Code 159.

Form of Charge. - That A.B., at theretofore sentenced to imprisonment upon a criminal charge, to wit (state the charge), afterwards at the time and place aforesaid, and before the expiration of the term for which he was so sentenced, was at large without a lawful excuse.

See Statute of 1899, c. 49, as to conditional release of prisoners by the Gov.-Gen. in Council.

Escape of Prisoner of War - Knowingly and Wilfully Assisting in: Code 160.

As to punishment of escaped prisoners, see Code 169.

The offences under Code 159-168 are indictable.

Tribunal.—Sessions. Magistrate on consent. See 57-58 Vict., c. 57. Limitation .- None.

Punishment.-Under Code 159, two years imprisonment; Code 160, five years; Code 161, seven years; Code 162, two years; Code 163, two years; Code 164, two years; Code 165, seven years; Code 166, five years; Code 166 (a) in Amendment Act of 1900, one year; Code 167, two years; Code 168, two years.

See also 53 Vict., c. 37, in app. to the Criminal Code.

Evidence, False.—See Perjury.

Explosives, Unlawfully Making or Possessing: Code 101.

Form of Charge.—That A.B., at , on , did unlawfully make, or unlawfully and knowingly have in his possession, or under his control, an explosive substance, namely, (describe or name it), under such circumstances as to give rise to a reasonable suspicion that he did not make (or is not making, or that he had not in his possession or under his control) the said explosive substance for a lawful object, which circumstances were (or are) as follows: (state them).

Punishment. - Seven years imprisonment.

Explosion, Causing Dangerous; Code 99.—Indictable Offence.

Form of Charge.—That A.B., at , on , by an explosive substance, namely, (name or describe it), unlawfully and wilfully caused an explosion, of a nature likely to endanger life (or to cause serious injury to property).

Punishment,-Imprisonment for life.

Explosion, Doing any Act, or Conspiring, to Cause: Code 100.—Indictable Offence.

Form of Charge: under Code 100 (a).—A similar form to that under Code 99: see next preceding form; or

That A.B., on , at , unlawfully and wilfully conspired with C.D. to cause by an explosive substance, to wit, (name it), an explosion likely to endanger life (or to cause serious injury to property);

Under Code 100 (b).—That A.B., at , on , unlawfully and wilfully made, or had in his possession, or under his control, an explosive substance, to wit, (same 41), with intent by means thereof to endanger human life, or to cause serious injury to property; or, to enable C.D. by means thereof to endanger human life, or to cause serious injury to property.

Punishment. - Seven years.

Tribural: under Code 99-101. - Sessions. Magistrate on consent.

Lim. ation .- None.

Proceedings under Code 100 are to go no farther than arrest and remand for safe custody without the consent of the Attorney-General: Code 545; and see Code 3 (b).

For definition of explosive substance, see Code 3 (i).

As to search warrants for and seizure of explosive substances see Code 569 (7), (8), (10).

Explosives, Causing Bodily Injuries By: Code 247.— Every one is guilty of an indictable offence and liable to imprisonment for life who unlawfully, and by the explosion of any explosive substance, burns, maims, disfigures, disables or does any grievous bodily harm to any person.

Attempts: Code 248.

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Form of Charge (Code 247).—That A.B., on by the explosion of a certain explosive substance, to wit, (name it), unlawfully did burn (or maim, or difigure, or disable, or do grievous bodily harm to C.D.

Form of Charge (Code 248 (a) (1)).—That A.B., on unlawfully, and with intent thereby to burn (or maim, or disfigure, or disable, or do some grievous bodily harm to) C.D., (or to any person), (if the charge is under Code 248 (a) (ii) substitute the following) "seut or delivered to, or caused to be taken, or received by C.D., an explosive substance, or a dangerous or noxious thing, to wit, (name it); or (if the charge is under Code 248 (a) (iii) substitute the following) "put, or laid at (name the place, as on the sidewalk on the public street in, etc.), or or explosive substance, to wit, (naming it); or (if the charge is under Code 248 (b))—

That A.B., at , on , did unlawfully, and with intent to do bodily injury to C.D. (or to any person), throw in, or into, or upon, or against, or near, any building, or ship, or vessel, an explosive substance, to wit. (name it).

Tribunal.—Sessions. Magistrate on consent. Limitation.—None.

Explosion, Attempt to do Damage By: Code 488.

Form of Charge.—That A.B., at , on , did wilfully and unlawfully place or throw an explosive substance, to wit. (describe it), into, or near, a building, or ship, (describe), with intent to destroy, or to damage, the same, or certain machinery, or working tools, or chattels.

Tribunal. - Sessions. Magistrate on consent.

Limitation .- None.

Punishment. - Fourteen years imprisonment.

Extortion, by Accusing of Crime: Code 405, 406.

Form of Charge.—That A.B., at , on , did unlawfully accuse (or threaten to accuse) C.D. of an offence punishable with death (or imprisonment for seven years, or more) namely (state such offence: offences in Code 405, 406); with intent thereby to extort (or gain) money (or anything else, stating what) from the said C.D. (or from one E.F.), or whereby the said A.B. compelled (or sttempted to compel) the said C.D. (or one E.F., or any one) to (do any of the things mentioned in s.-s. (d) of Code 505, 506, stating what).

As to what is accusing: see R. v. Kempel, 31 O.R. 631; R. v. Johnston, 14 U.C.R. 569.

Tribunal.—Superior Court Justice or Magistrate to hold preliminary enquiry only.

Limitation. - None.

Punishments under Code 405: fourteen years, or under Code 406, seven years imprisonment; see also threatening letters; forcibly compelling execution of documents; steal, demand with intent to; conspiracy to bring false accusation.

Extortion, by Defamatory Libel: Code - 300; see also defamatory libel.

Form of Charge.—That A.B., at , on , did unlawfully publish, or threaten C.D. to publish, or offered to C.D. to abstain from publishing, or offered C.D. to prevent the publishing of a defamatory libel with intent to induce C.D. to prevent the said C.D. (or from E.F.), or with intent to induce C.D. (or E.F.) to confer upon the said A.B. (or upon one G.H.), or to procure for the said A.B. (or one G.H.), an appointment (or office) of profit (or trust), to wit (state what appointment or office), or instead of the foregoing words beginning "with intent" substitute the following: in consequence of the said A.B. (or G.H.) having been refused money by the said C.D. (or E.F.), or in consequence of the said A.B. (or G.H.) having been refused an appointment (or office) of profit (or trust), to wit (state what appointment or office).

Tribunal. - Sessions. Magistrate on consent.

Limitation,-None.

Punishmen!.—Two years imprisonment, or fine not exceeding \$600, or both.

Extortion by Threats: See Threats, Threatening Letters.

False Accounting by Clerk or Servant or Officer: Code 366.

Form of Charge.—That A.B., at , on , then being the Clerk, or Servant, of C.D., unlawfully and with intent to defraud the said C.D., did destroy, or mutilate, or falsify, a certain book (or other thing mentioned), which then belonged to the said C.D., by (here set out the alteration or fulsification).

Tribunal. - Sessions. Magistrate on consent.

Limitation.-None.

Punishment. - Seven years imprisonment.

False Accounting by Official: Code 364.

False Statement by Public Officer: Code 367.

False Bank Returns: R.S.C. c. 31.

Falsely Using the Title "Bank": Ib.

False Prospectus, Issuing of: Code 365.

False Evidence, Affidavits, etc.—See Perjury.

False News, Publishing: Code 126.

Form of Charge.—That A.B., at , on , did unlawfully. wilfully and knowingly publish false news (or a false tale), to wit, (state what it was), whereby injury, or mischief was (or was likely to be)

occasioned to a public interest, to wit, (state what public interest was

Tribunat. -- Sessions. Magistrate on consent.

Limitation,-None.

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wit, o be) Punishment, -One year's imprisonment.

False Pretences, see Theft by : Code .158-.16.1.

Falsely Pretending to Enclose Money in a Letter: Code 361.

Form of Charge.-That A.B., etc., did wrongfully and with wilful falsehood, pretend or allege that he, the said A.B., did enclose and send (or cause to be enclosed and sent), in a post letter, a sum of money, to wit (ten dollars, or as the case may be), or a valuable security, to wit (state what), or a chattel, to wit (state what), to one C.D., which sum of money (or an the case may be) he did not in fact so enclose and send (or eause to be enclosed and sent) in the said letter.

Tribunal, -- Sessions. Magistrate on consent.

Limitation,-None.

Punishment. - Three years imprisonment.

Obtaining Execution or Destruction of a Valuable Security by False Pretences; Code 360.

Obtaining Passage Ticket by False Pretences: Code 362.

False Telegrams. (Sending in false name.) Code 428.

Form of Charge. - That A.B., etc., with intent on the part of the said A.B. to defraud one C.D., unlawfully caused or procured a telegram to the effect (state its purport), to be sent, or delivered, to the said C.D., as being sent by the authority of one E.F., he, the said A.B., then knowing that the said telegram was not sent by the authority aforesaid with intent on the part of the said A.B. that the said telegram should be acted upon as being sent by the authority of the said E.F.

Containing False Matter: Code 429.

Form of Charge. - That A.B., etc., with intent on his part to injure (or to alarm) C.D., did unlawfully send (or cause or procure to be sent) a telegram (or a lette, or other message, stating by what means) containing matter which he then knew to be false, to wit (state the matter of the

Tribunal.—Under Code 428 or 429. Sessions. Magistrate on consent. Limitation .- None.

Punishment.-Under Code 428 the same as for forging a document to the same effect as that of the telegram: see Code 423; under Code 429, two years imprisonment.

Palse Warehouse Receipts: Code 376.—See Warehouse Receipts.

Felo de se.—See Suicide.

Fire, Illegal Use Of-Areon: Code 483.

For definition of the word "wilful," etc., see Code 481.

Form a qc.—That A.B., at , on , unlawfully, without legal justification or excuse, and without colour of right, did not fire to a certain (mention what was set fire to, as in Cule 482); or

That A.B., at , on , unlawfully, wilfully, without legal justification or excuse, without colour of right, and with intent to defraud, did set fire to (state what), belonging to the said A.B.

Attempted Arson: Code 484.

That A.B., at , on , unlawfully, wlifully, without legal justification or excuse, and without colour of right, did attempt to set fire to a (describe), belonging to B., and situated in aforesaid.

Tribunal.-Bessions. Magistrate on coment.

Limitation.-None

Punishment. -- For aroon, life imprisonment; or for attempt, fourteen years.

Setting Fire to Crops: Code 484.

Attempt to Set Fire to Crops: Code 485.

Form of Charge.—That A.B., at , on , unlawfully, wilfully, without legal justification or excuse, and without colour of right, did set fire to a certain (state what), to wit, (describe), the property of C.D., and thereby injured (or destroyed) the same.

Attempt. — (Same as above to the word "did," then insert the following): attempt to set fire to (state what, as in the preceding form); or

Did wilfully set fire to (state what), which was then so situated that he, the said A.B., then knew that a certain (mention any of the things stated in Code 484, according to the fact), was likely to catch fire therefrom.

Tribungt, - Sessions. Magistrate on consent.

Limitation .- None.

Punishment.—Under Code 484, fourteen years; under Code 485, seven yeurs.

Reckleady or Unterefully Setting Fire to Forest, etc. Code 486.

Form of Charge.—That A.B., at , on , A.D. 19 , by such negligence as shewed him to be reckless, or wantonly, regardless of consequences, (or in violation of a provincial (or municipal) law of the locality), to wit, (cite the statute, or regulation, or by-law), set fire to (state what, as in the above section), whereby the same was injured (or destroyed).

Tribunal. - Sessions. Magistrate on consent.

Limitation.-None.

Punishment.-Two years imprisonment.

Code 386 (4) .- The magistrate investigating any such charge may, in his discretion, if the consequences have not been serious, dispuse of the matter sommurily, without sending the offender for trial, by imposing a fine not excreding fifty dollars, and in default of payment by the committal of the offender to prison for any term not exceeding six months, with or without hard labour.

Threats to Burn, etc.: Code 487.

Form of Charge, -That A.H., at send (or, an stated in Code 487) to C.D. a letter (or writing) threatening to burn (or destroy) a certain building (or other thing mentioned, describing it), or certain grain, or hay, or straw, or certain agricultural produce (stating what it was), in, or under a certain building, or in a certain ship (describe the building or ship).

lessions. Magistrate on consent.

Limitation. -- None.

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re to d (or Punishment. - Two years.

Fire-Arms, Discharging, so as to cause disturbance of the peace and quiet of residents in vicinity: Code 207 (g). -See Disorderly Conduct.

Food, Selling Things Unfit for: Code 194 .- Every one is guilty of an indictable offence and liable to one year's imprisonment who knowingly and wilfully exposes for sale, or has in his possession with intent to sell, for human food articles which he knows to be unfit for human food.

Form of Charge.—That A.B., on , at , did unlawfully, knowingly and wilfully expose for sale (or had in his possession with intent to sell) for human food a certain article, to wit, (name it), which Form of Charge. - That A.B., on he, the said A.B., then knew to be unfit for human food by reason (state

Tribunal, -Sessions. Magistrate on consent.

Lim. tion .- None.

Punishment.—For second offence, two years imprisonment: s.-s. 2.

See also Amending Act, 1898, c. 24, as to adulteration of food, etc.

Forcible Entry or Tatainer. - Defined by Code 89.

Every one who forcibly enters or forcibly detains land is guilty of an indictable offence and liable to one year's imprisonment: Code 89 (4).

Form of Charge, -That A.B., at and forcibly, and in a manner likely to cause a breach of the peace, or , did unlawfully in a manner likely to cause reasonable apprehension of a breach of the peace, to wit, (set out the force or violence used), enter on land, to wit,

(describe it), which was then in the actual and peaceable possession of C.D.;

That A.B., at . on , being in actual possession, without colour of right, of certain land, to wit, (describe it), did unlawfully detain it in a manner likely to cause a breach of the peace, or reasonable apprehension of a breach of the peace, to wit, (shew the violence used), against C.D., who was entitled by law to the possession thereof.

Tribunal.—Sessions. Magistrate on consent. Limitation.—None.

A person entitled to possession of land or a chattel may take it peaceably, if he can; but not in a way likely to cause a breach of the peace. On the other hand, a person in possession of land, without colour of right, and who resists (in a manner likely to cause a breach of the peace) the peaceful entrance of the rightful claimant, is guilty of forcible detainer.

Foreign Enlistment.—33 & 34 Viet., c. 90 (Imp.), applies to Canada.

Forest, Setting Fire to, Negligently.—See Fire.

Forgery, Defamation and Statement of the Law: Code 419-422.

Code 423.—Every one who commits forgery of any of the documents mentioned in Code 423 (a) is guilty of an indictable offence and liable to imprisonment for life; or for forgery of any of the documents mentioned in Code 423 (b) to fourteen years, or for documents mentioned in Code 423 (c), seven years.

Form of Charge.—That A.B., at , on , did unlawfully and knowingly forge a certain document, that is to say (describe the document as mentioned in the sub-sections of Code 423).

Tribungi. - Sessions. Magistrate on consent.

Forgery.—By drawing document in name, or on account of another without authority: Code 431.

Forgery or Counterfeiting.—Preparing to commit, or making or having any of the instruments or means of committing forgery or counterfeiting: Code 433, 434.

Possessing Forged Bank Notes: Code 430.

Form of Charge.—That A.B., at , on , did unlawfully and without lawful authority or excuse purchase (or receive) from C.D. and without lawful authority or excuse purchase (or have in his possession or custody) a forged bank note, to wit (describe or lawful describe or custody) a forged bank note, to wit (describe or lawful describe or

it), or a forged blank bank note (describe it), he, the said A.B., then knowing the same to be forged.

Tribunat. - Sessions. Magistrate on consent.

Limitation .- None.

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Punishment. - Fourteen years.

Uttering Forged Documents: Code 424.

Form of Charge. - That A.B., at certain document, to wit, (describe it), to be forged, did unlawfully use, or deal with, or act upon it (or did cause, or did attempt to cause, one, C.D., to use, or deal with, or act upon it), as if it were genuine, by

Falsifying or Destroying, Defacing, or Injuring Public Registers of Births, etc.: Code 4:16.

Falsifying Extracts or Certified Copies of such Registers: Code 437.

Issuing False Certificates of Entries in such Registers: Code 438.

Issuing False Certificates of Copies or Extracts of True Copies: Code 439.

Making False Entries in Books Relating to Public Funds: Code 440.

Making False Entries of Transfers of Shares in Stocks, etc.: Code 440 (b).

Issuing False Dividend Warrants: Code 441.

Forging Official Proclamation: Code 427; or Counterfeiting Public Seals: Code 425; or Scals of Courts, etc.:

Fortune Telling .- See Witchcraft.

Franchise, Offences Against the: R.S.C. c. 5.

Fraudulent Conveyance. - See Frauds on Creditors.

Frauds on Creditors .- Conveying, Disposing of, Removing or Concealing Property to defraud creditors; or receiving property for a like purpose: Code 368.

Form of Charge. - That A.B., at on the part of the said A.B. then and there to defraud his creditors (or on the part of the said A.B. then and there to defraud his creditors (or C.D., one of his creditors), to whom he was then lawfully indebted in a certain sum of money, did unlawfully, to wit, on the said day fransfer, or delivery) of his property, consisting of (describe it).

Did unlawfully remove a part of his property, to wit (state the articles removed), from (or concealed, or disposed of a part

of his property, to wit (state the articles, and in what manner they were connected or disposed of).

That A.B., at , on , with the intent on the part of the said A.B. that one C.D. should defraud the creditors (or E.F., one of the creditors) of the said A.B., did unlawfully receive from the said A.B. certain property of the said A.B., to wit (state what).

Tribunal.-Sessions. Magistrate on consent.

Limitation.-None.

Punishment.—Eight hundred dollars fine and one year's imprisonment.

Frauds on Creditors; Destroying or Falsifying Books; or making false entries: Code 369.

Form of Charge.—That A.B., at , on , with intent on the part of the said A.B. to defraud his creditors (or to defraud C.D., one of his creditors), did unlawfully destroy (or deal with in any of the ways mentioned, stating how), a certain book of account of the said A.B. (or a certain writing, or security, to wit, state what e.g., a certain promissory note theretofore made by one E.F. to and then held by the said C.D. and unpaid) or was privy to the making of a false (or fraudulent) entry in a book of account kept by the said A.B., whereby it appeared that a certain debt then due by G.H. to the said A.B. had been theretofore paid, whereas in truth and in fact the said debt had not been paid, but was then still due and owing to him the said A.B. by the said G.H.

Tribunal .- Sessions. Magistrate on consent.

Limitation .- None.

Punishment. - Ten years imprisonment.

Fraudulent Concealment of, Incumbrance, etc., by mortgagor or seller of land, or chattel or chose in action: Code 370.

The consent of the Attorney-General for the Province is required before prosecution: Code 548.

Form of Charge.—That A.B. at , on , then being the seller, or mortgagor, of a certain parcel of land (or chattel, describing it) to one C.D. (or then being the solicitor or agent of one A.B., the seller, (etc., as above), and having been served on behalf of the said C.D., as such purchaser or mortgagee, with a written demand of an abstract of title of the said land (or chattel) before the completion of the said purchase or mortgage by the said C.D., did unlawfully and with intent to defraud and in order to induce the said C.D. to accept the title offered to him, conceal a deed or incumbrance (or other instrument, naming it) material to the title (state what the instrument was and shew its materiality, e.g.), a vendor's lien on the said chattel in favor of one G.H., under a written instrument signed by the said A.B., whereby the said G.H. had, at the time of the completion of the said purchase or mortgage, and still has, a lien upon the said chattels for the price thereof on the sale of the same by him to the said A.B.

Tribunal. - Sessions. Magistrate on consent.

Limitation .- None.

Punishment. — Two years imprisonment or a fine, or both. The amount of the fine is not stated, and so is entirely in the discretion of the court or magistrate: Code 934.

Fraudulent Sale of Land with knowledge of prior unregistered deed or mortgage: Code 37.2.

Form of Charge.-That A.B., etc., knowing the existence of an unregistered prior sale (or grant or mortgage or incumbrance) made by to , of or upon certain real property, namely, the said real property (or of a part of the said real property) to C.D.

Punishment,-One year's imprisonment and two thousand dollars fine.

Fraudulent Mortgage of Land: Code 373.

Form of Charge. - That A B., etc., did unlawfully pretend to mortgage to C.D., and did execute ; retended mortgage from himself to the said C.D. on certain real property, namely (describe it), to which he the said A.B. then knew he had, as in fact he had, no legal or equitable title. See also s.-s. 2.

Punishment.—One year's imprisonment and a fine of \$100.

Tribunal. - Sessions. Magistrate on consent.

Limitation. - None.

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Fraudulent Acts or Concealments in respect to the registration of titles: Code 371.

Furious Driving: Code 253.—Causing bodily harm by furious or wanton driving, or racing, or wilful neglect, or misconduct, while in charge of a vehicle.

Form of Charge.-That A.B., on of a vehicle in a public place, to wit, (name the street or place,) by wanton, or by furious driving, or by racing, or by wilful misconduct, or by wilful neglect (state what the misconduct or neglect consisted in, and state circumstances to shew it was wilful), while so in charge of the said vehicle, did, or caused to be done, bodily harm to C.D.

Tribunal. - Sessions. Magistrate on consent.

Limitation. - None.

Punishment. -- Two years imprisonment.

This offence is also an assault at common law, and could be dealt with as such under Code 265 or 261. As to the meaning of "wilful," while Code 841 applies only to offences under Part 37, yet the definition there given is in accordance with the definition given by the courts under the general law, and is undoubtedly applicable to all offences in which wilfulness is an ingredient.

Frauds on Consignees of Merchandise: Code 377.

Fraudulent Receipts, or fraudulent dealing with property used for any purpose under the Bank Act: Code 378.

Frandulent or False Warehouse Receipts: Code 376 .-See Warehouse Receipts.

Gambling in Public Conveyances: Code 20-1.

Form of Charge.—That A.B., on , at , in a railway car on the railway (or on a steamboat known as the, naming it), and then used as a public conveyance for passengers, by means of a game of cards (called ''), or dice, (or other instrument of gambling naming it), or by a device, (describing it), unlawfully obtained from C.D. a sum of money, to wit, the sum of , or a chattel, to wit, (e.g., one silver watch), or a valuable security or property (describing it).

For "attempt" see Code 203 (b).

Punishment.—One year's imprisonment.

Tribunal .- Sessions. Magistrate on consent.

Limitation,-None.

Railway conductor or master of steamboat making default in the duty of arresting, with or without warrant, any person guilty of the above offence, or an attempt to commit it is liable to be tried summarily before a justice and fined not less than \$20 nor more than \$100: Code 203 (2).

Any company or person who fails to put up in the car or steamboat a notice against gambling as required by Code 263, is liable on summary conviction to a fine of \$20 to \$100: Code 203 (5).

Gaming.-See Code 783.

Gaming, Living by.—See Disorderly Conduct or Vagrancy: Code 207 (l).

Gaming in Stocks, etc.—De ined and made a criminal offence by Code 201.

Frequenting Bucket Shops: Code 202.

Evidence and Burden of Proof: Code 704.

Form of Charge (Code 201 (a)).—That A.B., on, at, with the intent on the part of the said A.B. to make gain or profit by the rise or fall in price in the stock of an Incorporated Company (or unincorporated undertaking) called and known as (name the Company), did unlawfully make or sign (or authorize to be made or signed) a contract (or agreement), which purported to be a contract (or agreement) for the sale (or purchase), by the said A.B., of shares of stock in the said Company, without the bond fide intention on the part of the said A.B. of acquiring (or selling) the said shares.

If the agreement or contract had reference to goods, wares or merchandize, substitute the same for shares of stock, and state what such goods, etc., were.

By s.-s. (b) similar provisions are made against agreements purporting to be for the sale or purchase of shares of stock. g ods, etc., without actual delivery, and without bond fide intention for delivery.

Sub-section 2 provides for an exception in the case of a broker receiving delivery for the purchaser, notwithstanding the broker's retention or the pledge of the shares, etc, as security for advances.

Sub-section 3.—Every place where the business of making, signing or procuring such agreements is carried on, is declared to be a common gaming house: as to which see infra.

Gaming House, Common.-Defined by Code 196, as amended by the Act of 1895, c. 40.

Using Premises for Purposes of Betting or Wagering or Pool Selling: Code 204.

Common Betting House Defined: Cale 197, amended by the a me Statute.

Keeping a Common Gaming or a Common Betting House an Offence: Code 198; see also 783 (g) (h), (i).

Definition of "Keeper": Code 198 (2).

Playing or Looking on an Offence: Code 199.

Searching: Code 575 (New Section) in Act of 1895; see also as to Power of Magistrates: R.S.C. c. 158, ss. 9, 10. (Unrepealed: see App. to Criminal Code).

Obstructing Peace Officer Entering: Code 200.

Evidence: Code 702, 703 (Amended in Act of 1900).

Form of Charge (Keeper) .- That A.B., at unlawfully keep for gain a disorderly house, that is to say, a common gaming house (or a common betting house), as defined by s. 196 (or by s. 197, as the case may be) of the Criminal Code of Canada, that is to say, e.y., (s. 196 (a), a house, or a room, or place (describing it) then and there kept by the said A.B. for gain, and to which persons then resorted for the purpose of playing at a game of chance, or of mixed chance and skill: (see s. 196 (a) in the Act of 1895); to wit, (state what the game was called, e.g., the game played with cards and commonly known at I called by the name of Poker).

See also Lotteries.

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Gardens, Destroying. - See Disorderly Conduct: Code 207 (h); Wilful Damage: Code 509.

Grain Receipts, False: Code 378.—See Warehouse Receipts.

Human Remains. - Offences respecting : see Dead Human Body.

Ice.-Leaving holes in the ice unguarded: Code 255; see Negligence, Criminal.

Incest: Code 176.

Form of Charge. - That A.B. and C.D. at , on A.D. 19 , did unlawfully cohabit and have sexual intercourse with each other, they being parent and child (or brother and sister, or grandparent and grandchild), and being then aware of their said consanguinity, and did thereby commit the crime of incest.

Tribunal. - Sessions. Magistrate on consent.

Limitation .- None. Punishment. - Fourteen years: male to be whipped. If the female was a party only under restraint, fear or duress of the other, the Court may discharge her without punishment: Code 176.

Indecent Acts: Code 177.

, unlawfully did Form of Charge.—That A.B., at on , unlawfully did an indecent act (describe it) in the presence of (.D., or of C.D. and E.F., or of one person whose name is unknown (or as the case may be), in a place to which the public then had access, or to which the public were then permitted to have access, namely, on the public street called
Street, or in the public park known as
or in the
bar room, or reading room of the
Hotel, or in the reading

room of the public library, (or as the case may be), in the said

Unlawfully did an indecent act (describe it) in the presence of C.D., in (name the place, public or private), he, the said A.B., intending by such act to insult or to offend the said C.D.

See also 53 Vict., c. 37, s. 6 (unrepealed App. to Cr. Code), against wilful indecency or indecent exposure of the person in a public place, in the presence of one or more persons.

Tribunal.—Two justices, summarily.

Limitation .- Six months: Code 841. Punishment .- \$50.00 or six months, or both.

Indecency, Gross, Between Males: Code 178.

. Tribunal .- Sessions. Magistrate on consent.

Limitation .- None.

Punishment.-Five years and whipping.

Indecent or Scurrilous Books, Letters, etc., Posting: Code 180. (New section in the Act of 1900.)

, on post for transmission, or delivery by or through the post to one C.D., an Form of Charge. - That A.B., at obscene or immoral book (or any of the things mentioned) of an indecent or immoral or scurrilous character.

A letter or an envelope addressed to one C.D., upon the outside of which letter or envelope (or a post eard, or a post band or wrapper upon which)

there then were words or devices or matter of an indecent or immoral or

A letter or a circular concerning a certain scheme devised (or intended) by the said A.B. to deceive and defraud the public (or for the purpose of obtaining money from the said C.D. under false pretences, to wit (state

Indecent, or Immoral Matter, Publishing: Code 179 (new section in the Act of 1900).

Form of Charge: (a) (Obscene Book, Picture, etc.).—That A.B., at on , unlawfu'y, and knowingly, and without lawful justification or excuse, did manufacture, or sell, or expose for sale, or expose to public view or distribute, or cause to be distributed, or cause to be public view, or distribute, or cause to be distributed, or cause to be circulated, an obscene book called (describe the book), or certain printed. or typewritten, or written, matter, or a picture, or photograph, or model, or object, (describing what it was), tending to corrupt morals; or

(b) (Indecent or Disgusting Exhibitions)-Did unlawfully exhibit a disgusting object, or an indecent show, (describing it): (see also Code 207 (c),

(c) (Advertising Drugs to Procure Abortion)-Did unlawfully offer for sale, or advertise, or publish an advertisement (by placard, or poster, or in a newspaper called the), or had for sale, or disposal, a medicine, or drug, or article (describing it), intended (or represented) as a means of preventing conception, or of causing abortion, or miscarriage

Tribunal. - Sessions. Magistrate on consent.

Limitation .- None.

Punishment,-Two years.

Injuries to Buildings by Tenants: Code 405.—See Wilful Damage.

Injuries, other .- See Wilful Damage.

Injury by Furious Driving .- See Furious Driving.

Intimidation: Code 523, 526.—See Threats, and see also Trade; Offences relating to.

Intimidating a Legislature: Code 70.—See Conspiracy.

Killing Unborn Child.—See Abortion.

Killing Animals with intent to steal: Code 307.- See Theft.

Killing Cattle, etc.: Code 449 (B) (b).—See Wilful Injuries.

Land. Fraudulently destroying documents of title: Code .3.7.3.

Theft of things fixed to .- See Theft.

Landmarks: Code 505-506.—See Wilful Injury.

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Larceny. Merged in theft: Code 303 .- See Theft.

Letters, letter bags, etc, Stealing .- See Theft.

Letters or letter bags, opening unlawfully, or keeping: R.S.C. c. 35, s. 89 (unrepealed: app. to Cr. Code): Code 983 (3).

Form of Charge.—That A.B. at on did unlawfully open, or did unlawfully and wilfully keep or secrete or delay or detain (or cause to be, *to.), a post letter, that is to say, a letter transmitted by the post, or a let'er deposited in the post office at , or a letter deposited in a letter box put up at under the authority of the Postmaster-General · f Canada, and addressed to C.D.

Tribunal, -Sessions. Magistrate on consent.

Limitation .- None.

Punishment.-Five years (Code 951).

Letter, Fulvely Pretending to send Money in: Code 361.—See False Pretences.

Letter, Threatening: Code 403, 405, 406, 487.—See Extortion.

Levying War Against His Majesty: Code 68.—See Treasonable Offences.

Libel.—See Blasphemous Libel; Defamatory Libel.

Liquor License Act, Breaches of: R.S.O. c. 245.

Lord's Day Act, Breach of R.S.O. c. 246.

Form of Charge.—(S. 1, Carrying on Business) That A.B., at , on , being then a merchant (or any of the occupations mentioned, stating it) did unlawfully sell, or publicly shew forth for sale, or publicly expose for sale, or offer for sale, or to purchase certain goods, or chattels, or personal property, or real estate, to wit, (describe it); or do, or exercise worldly labour, or business or work of his ordinary calling as a merchant (or other calling, stating it), that is to say, (state what the business or work done consisted in), the same not being a work of necessity, or of charity, nor connected with conveying travellers, or His Majesty's mail by land or by water, nor selling drugs or medicines.

Public Political Meetings on Sunday are prohibited by 3. 2.

Revelling, intoxication in public, brawling or profane language to the disturbance or annoyance: s. 1

Playing skittles, football, rackets, or any other noisy game, or gambling with dice or otherwise, racing: s. 2.

Hunting, shooting: s. 4; fishing: s. 5; bathing in public and exposed places: s. 6; excursions by rail or steamboat

plying for hire: s. 6; street railways (subject to exceptions):

Tribunal. - A Justice or Magistrate, summarily: s. 10.

Limitation. - One month: s. 16.

Punishment.—01 to \$40; one-half to be paid to the informer, and one-half to the County or City Treasurer; s. 11.

The procedure and forms of conviction are provided by NS. 12-15.

Selling or Obtaining Liquor on Sunday: R.S.O. c. 245, 88. 54-73.

Lotteries: Code 305.

(a) Making or advertising plan for disposing of property by a mode of chance.

Form of Charge.—That A.B., at nake, or print, or advertise, or publish, (or cause, etc.), a proposal, or disposing of in any other way, describing it), of certain property, namely, (describe it), by lots, or by cards, or tickets, or by a mode of chance

(b) Selling lottery tickets.

(c) Schemes for determining what holders of lottery tickets are winners (sub-section added by the Act of 1895).

(2) Buying lottery tickets. Exceptions, s.-s. 6: (a) division of property by lot by joint owners; (b) raffles of articles not exceeding \$50 in value at bazaars for charitable or religious purposes, provided leave is obtained from the mayor or nead of the municipality, and provided the articles have previously been offered for sale (see amended s.-s. 6 of Code 205 in the Act of 1900); (c) other exceptions.

Trebunal. - Sessions. Magistrate on consent.

Limitation .- None.

Punishment.-Fine of \$1000, and two years imprisonment.

Lunatic, Dangerous: R.S.O. c. -17, ss. 12-25.

The usual information, Form C. to the Criminal Code, may be laid on oath by any one: see s. 12.

Form of Charge.—That A.B., r , is suspected and believed by the said C.D. (the person lay g the information), to be insure and dangerous, to be at large, and has exhibited a purpose of committing (state what indictable offence the lunatic is believed to be likely to commit, and murder or succede or area. Form of Charge. - That A.B., 1 e.g., murder, or suicide, or arson, or as the case may be).

Warrants to apprehend and of committal are given at p. 3588 of the Revised Statute. Form at p. 3592 is also to be filled out, giving the information required by ss. 19, 20.

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The proceedings will be the same throughout as on an ordinary summary trial before a justice under the Criminal Code: see also as to procedure, ss. 13-21. The depositions and papers are to be forthwith sent to the gaoler: Code 22.

Lying in Wait Near Public Meeting: Code 115 .- See Assault.

Mail, Stopping the: Code 401.

For this and other offences in respect of the mail, or mailable matter, see Robbery.

Maiming. -- See Wounding.

Manslaughter: Code 236.

Is culpable homicide not amounting to murder: Code 230. For definitions and provisions of the law as to what is homicide and when culpable, see Code 218-226 and 229.

Form of Charge.—That A.B., at kill and slay C.D. . did unlawfully

Tribunal. -- Sessions Magistrate on consent.

Limitation .- None.

Punishment. - Imprisonment for life.

Culpable negligence under Code 255 whereby death is caused is declared by that section to be manslaughter.

Harriage. Procuring a Feigned or Pretended: Code 277.

Form of Charge.—That A.B., at , on , did unlawfully procure a feigned or pretended marriage between himself and a woman named C.D., or did unlawfully and knowingly aid and assist E.F. in procuring a feigned or pretended marriage between the said E.F. and a woman named C.D.

Limitation .- None.

Punishment. - Seven years.

The evidence of one witness is insufficient unless corroborated: Code 684.

Marriage, Solemniz ag Without Authority: Code 279.

Form of Charge. - That A.B., at lawful authority, unlawfully solemnize, or unlawfully pretend to solemnize a marriage between C.D., a man, and E.F., a woman; or did unlawfully procure one G.H. to unlawfully solemnize a marriage between C.D., a man, and E.F., a woman, he, the said A.B., then well knowing as the fact was that the said G.H. was not then lawfully authorized to solemnize such marriage as aforesaid.

Limitation .- Two years.

Punishment. - A fine (no amount stated and so in the discretion of the sourt) or two years imprisonment, or both.

Marriage, Notemnizing, Contrary to Law: Code 280.

Form of Charge. - That A.B., at authorized by law to solemnize marriages in the Province of authorized by law to solemnize marriages in the Province of did then and there unlawfully, knowingly and wilfully solemnize a marriage between A.B., a man, and ('.D., a woman, in violation of the laws of the said Province in which the sid marriage was so solemnized, that is to make the said province in which the sid marriage was so solemnized. that is to say, without any license being issued for the said marriage, and without the due publication of the bans of matrimony required by the laws of the said Province (or as the case may be).

Limitation,-None.

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Punishment. - Fine (no amount stated, and so in the discretion of the Court) or one year's imprisoment, or both.

Tribunal (under Code 277, 278 or 280).—Sessions. Magistrate on consent.

Marine Stores. - See Public Stores.

Masked or Black Faces. - See Burglary.

Master and Servant or Apprentice. See Apprentice: Master and Servants Act, R.S.O. c. 157: Act respecting Apprentices and Minors, R.S.O. c. 161; see also, Negligence, Criminal, and Code 217, as to injuries by master to servant

Menaces. - See Threats.

Militia and Naval Service and Mounted Police, Offences respecting: Code 72-75.

Mines, injuries to: Code 498 .- See Wilful Injuries.

Leaving Openings in, Unguarded.—See Negligence.

Fraud by Partner, etc., in gold or silver mines, etc.: Cide 311-312.—See Theft.

Mining, Fraudulent or Unlawful Dealings in respect to gold or silver mines or unmanufactured gold or silver: Code

Mining Machinery, Injuries to: Code 85, 86, 499, C. (i). -See Wilful Injuries.

Minors, Supplying Tobacco to Minors: R.S.O. c. 261.

Form of Charge. - That A.B., at sell, or give, or furnish to C.D., who was then a minor under the age of eighteen years, eigarettes or cigars, or tobacco, in the form of a cigarette or a cigar, or a plug or cut tobacco, for smoking or chewing.

Section 2 excepts sales to a minor for his parent or guardian on the latter's written order.

As to evidence of age see s. 3.

Tribunal .- A Justice summarily.

Limitation, -Six months.

Punishment, -- Fine not less than \$10 or more than \$50, or 30 days, or both.

Admitting Minorn Under 16 to Billiard Room: R.S.O. c. 247.

Form of Charge.—That A.B., at , on , being there and then the keeper of a licensed billiard, or pool, or bagatelle room, for hire or gain, did unlawfully admit C.D., a minor, who was then under the age of sixteen years, to the said billiard room, (or did unlawfully allow C.D. (etc., an above) to remain in the said billiard room), without the consent of the parent, or guardian of the said C.D., he, the said C.D., then not being a member of the family, or the servant of the said A.B., (or he, the said C.D., not then going to the said billiard room for the purpose of loitering, or to play billiards therein), and the said A.B., not then having reasonable cause to believe that such consent had been given by the parent or guardian of the said C.D., or that the said C.D. was not under the age of sixteen years.

Tribung! .- A Justice summarily.

Limitation .- Six months.

Punishment,—Not exceeding \$10 for the first offence, and not exceeding \$20 for any subsequent offence. One half of fine goes to the informer.

Supplying Liquors to persons under 21, or allowing them to loiter in bar-rooms, etc.: R.S.O. c. 245, s. 78.

Minors: see Apprentices, Master and Servant; also chapter on Juvenile Offenders, Neglected Children.

See Code 55 as to authority of parents, schoolmasters and masters to discipline children, pupils or apprentices.

Mortgagors, fraudulently giving mortgage: Code 37.4.

Mortgagors, injuries to buildings, etc., by: Code 504.—See Wilful Injuries.

Mounted Police, enticing to desert, etc.: Code 75.

Murder: Code 231,—See definitions in Code 227, 228, 229.

Form of Charge.—That A.B. murdered B. at the of the County of , and Province of , on the day of , A.D. 19 ,

See Form F.F. to the Criminal Code: Code 611.

Tribunal.—Superior Court. Justice or Magistrate to hold preliminary enquiry only. See Code 568, 642, as to duty of Coroner.

Limitation.-None.

Punishment .- Death.

Attempt to Murder: Code 242, which describes the various acts which constitute this crime. For definitions, see Code

Form of Charge. - That A.B., on Form of Charge.—That A.B., on , at , did unlawfully (state the act done as indicated in Cade 242), with intent thereby then and , did unlawfully there to murder C.D.

Threat to Murder: Code 233. Definition of "writing"; Code 3 (ee),

Form of tharge, - That A.B., at send, or deliver, or utter, or cause to be received by C.D., a letter, or a writing (describing ii), threatening to kill writing (describing ii), threatening to kill, or murder, the said ('.i), (or one, E.F.) he, the said A.B., then well knowing the contents of the said

Punishment, -Ton years.

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Conspiracy to Murder: Code 334.

Form of Charge. - That A.B., at on did unlawfully conspire or agree with C.D. (or A.B. and C.D. did unlawfully complete by the constitution of the together, or agree with each other) to murder E.F., or to cause E.F. to be murdered, or that A.B. did unlawfully counsel, or attempt to procure

Punishment. - Fourteen years.

Accessing after the fact to Murder: Cule Min See Accessories, Definition, etc., Code 63. See also Code 627 providing that an accessory may be tried for the offence either alone as for a substantive offence, or jointly with the principal, and whether the latter has or has not been charged or convicted.

Form of Charge.—That one C.D. did at E. T., and A.B. at on the F. ... and A.B. at on then well knowing the said C.D. to have committed the said crime, as aforesaid, did afterwards, to wit, on the day and year and at the place last aforesaid, unlawfully receive or comfort or assist the said C.D. in order to enable the said C.D. to

Punishment. - Imprisonment for life.

Tribunal. - Under Code 232-235. Superior Court. Justice or Magistrate to hold preliminary enquiry.

Limitation .- None.

Negligence, Criminal: Code 312-215.

Causing Grievous Bodily Injury.

Every one is guilty of an indictable offence and liable to two years imprisonment who, by any unlawful act, or by doing negligently, or omitting to do any act which it is his

duty to do, causes grievous bodily injury to any other person: Code 252.

Form of Charge.—That A.B., at , on , did an unlawful act, to wit, (state the unlawful act, e.g., by unlawfully riding a bicycle at a greater speed than at the rate of miles an hour upon the public street contrary to the by-law of the said of , in that behalf made and provided, ran the said bicycle violently against C.D., who was then lawfully passing along the said street), whereby grievous bodily injury was caused to the said C.D.

Tribunal.—Sessions. Magistrate on consent.

Limitation .- None.

Negligently Causing Danger to Travellers on Railways: Code 251.

Form of Charge.—That A.B., at , on , by an unlawful act, that is to say, (describing it), or by a wilful omission or neglect of his duty in that behalf, that is to say, (state the act omitted), did unlawfully endanger, or cause to be endangered, the safety of persons then being conveyed by, or who were then lawfully in or upon a railway known as the

Tribunal.-Sessions. Magistrate on consent.

Limitation .- None.

Punishment.-Two years.

Injury by Negligent Driving a Vehicle: Code 353.—See Furious Driving.

Leaving Holes in the Ice Unguarded: Code 255 (a).

Form of Charge.—That A.B., at on , having at or shortly before the said day cut, or made (or caused, etc.), a hole or opening of sufficient size to endanger human life through the ice, on a navigable water (or on water open to, or frequented by the public) that is to say: on the harbour basin at the , of , did thereafter, that is to say, on the day and year above mentioned, leave the said hole, or opening, while it was in a state dangerous to human life, unenclosed by bushes or trees, and unguarded by a guard or tence of sufficient heighth and strength to prevent any person from accidentally riding, driving, walking, skating or falling therein.

Tribunal.-Justice or Magistrate summarily.

Limitation. - Six months: Code 841.

Punishment.—Fine or imprisonment. No amount or time is mentioned; but Code 951 provides a fine of \$50 or six months imprisonment, or both.

Leaving Excavations or Unused Quarries or Mines Unguarded: Code 255 (b).—See Code 255 (c), as to further prosecution if neglect persisted in after conviction.

If death is caused the offending party is guilty of manslaughter: Code 255 (2).

Neglect to Obtain Assistance in Child birth: Code 239.— See Child birth. Neglect by Person Having Charge of Another to Provide Necessaries.—Code 209.

Form of Charge.—That A.B., at

days and times before that date, had charge of one C.D., who was then
unable by reason of insanity, or age (or as the case of life, such charge, and unable to provide herself with the necessaries of life, such charge having been then undertaken by him the said
A.B., under a contract therefore made, and then in force between him
and one E.D., the husband of the said C.D. (or such charge having been
unlawful act, stating what such act was), the said A.B. did at the time
and place first above mentioned unlawfully and without lawful excuse
omit to provide and supply the said C.D. was caused, or the life of the
said C.D. was endangered, or the health of the said C.D. has been, or is
likely to be permanently injured.

Neglect of Parent or Guardian, etc., to Provide Necessaries for Child under 16: Code 310.

Code 210 (3) in the Act of 1900, "guardian" includes any person who in law or in fact has the custody or control of a child.

Form of Charge.—That A.B., at , on , and on several days and times before that date, being the father (or as the case may he) of c.D., a child then under the age of sixteen years, and such child then being a member of the household of the said A.B., who was then as the parent (or as the case may he) of the said child as aforesaid he, the said A.B., did then and there unlawfully, and without lawful the said A.B., omit to provide necessaries for the said child, excuse, and while the said child was a member of the household of the the said A.B., omit to provide necessaries for the said child, whereby the life of the said child has been and is endangered, or whereby the health of the said child is or is likely to be permanently injured.

Neglect of Husband to Provide Necessaries for Wife: Code 210 (2).

Form of Charge.—That A.B., at , on . and on several days and times before then, being the husband of C.D., his wife, and as such husband being under a legal duty to provide necessaries for her, and there unlawfully omit, without lawful excuse, to provide the health of the said C.D. was endangered, or the health of the said C.D. is now or is likely to be permanently injured.

Neglect by Master or Mistress to provide necessaries for servant or apprentice: Code 211.

Tribunal.—Under Code 209-211. Sessions. Magistrate on consent. Limitation.—None.

Punishment.-Three years.

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As to proof of age of child or apprentice, see Code 701 (a) in the Act of 1900.

Causing Death by omission to observe a legal duty is culpable homicide: Code 220.

Negligently setting Fire to Forests, Etc.: Code 468. See Fire.

Nuisances: Code 192.

Oaths, extrajudicial: Code 153.—R.S.C. c. 4, App. to Criminal Code.

Oaths to commit crime, and other unlawful oaths: Code 120-122. See also C.S.L.C. c. 40.

Obstructing or Resisting (1) a public officer (see Code 3 (w) for definition) in the execution of his duty: Code 144; or (2) a peace officer (defined by Code 3 (s)): Code 144 (2a); or any person lawfully executing process against lands or goods, or making a seizure or distress: Code 144 (2b).

Tribunal. -(1) Sessions. Magistrate on consent; (2) and (3) Two justices or a magistrate, summarily; or may be tried as indictable offences before the Sessions, or before a magistrate on consent.

Limitation.—(1) None; (2) or (3) Six months for summary trial: Code 841; or if on indictment, time not limited.

Punishment.—(1) Ten years: (2) or (3) on indictment, two years, or on summary conviction, \$100 fine or six months imprisonment. See also assaulting public or peace officer.

Obscenity.—See Indecent Acts.

Obscene Exhibitions: Ib.

Obscene Matter, Publishing: 179 Ib.

Obscene or Immoral Books, etc., Posting: 180 Ib.

Offensive Weapons.—See Weapons.

Oil Wells, Injuries to: Code 498.—See Wilful Injuries.

Perjury, or Subornation, Defined: Code 145.

Evidence on Charge of: Code 691.

Corroboration Required: Code 684.—See R.S.C. c. 154 Committing Perjury or Subornation: Code 146.

A form of charge of perjury is given in the schedule to the Criminal Code: Form F.F.

Form of Charge of Subornation.—Proceed as in Form F.F. to the Criminal Code, and add the following: And that on , at before the said A.B. committed the said perjury, C.D. did unlawfully counsel or procure the said A.B. to commit the said perjury. (See Code 146 (4)).

Punishment, - Fourteen years.

False Satement on Outh or Affirmation, otherwise than in a judicial proceeding: Code 147.

Punishment .- Seven years.

Taking False Affidarit, or Declaration, is perjury: Code 148, 149,

False Statement or Declaration, not on oath, in any matter before an officer or notary where authorized by law: Code 150.

Punishment .- Two years.

Fabricating Evidence: Code 151.

Punishment .- Seven years.

Tribunal .- In perjury and the above kindred offences: Sessions. Magistrate on consent.

Limitation .- None.

Personation: Personating Candidate in a Competitive or Qualifying Examination : Code 457.

Form of Charge. - That A.B., at fulsely, and with intent thereby to gain an advantage for himself (or for ('.D.), did personate C.D., a candidate at a competitive or a qualifying examination, held under the authority of the statute of Canada, (e.g.), called The Civil Service Act. (or in connection with the or University, naming it); or

Did procure himself, the said A.B. (or one E.F.), to be personated at a competitive (etc., as in the preceding form); or

Did knowingly avail himself of the results of a personation by C.D. of him, the said A.B., at a competitive (etc., as in the above form).

Tribunal.-Justice, summarily. Limitation .- Six months: Code 841. Punishment. One year, or \$100 fine.

Personating Owner of Stock, shares, annuity, or public funds, etc.: Code 458.

Punishment. - Fourteen years.

Form of Charge. - That A.B., at falsely and deceitfully did personate ('.D., the owner of a share in certain stock, that is to say, in the stock of the Bank (or as the case may be), amounting to the sum of \$, and then transferable at the said Bank, and by means thereof did unlawfully transfer (or endeavour to transfer) the said shares of the said C.D. in the said stock, as if he, the said A.B., were the true and lawful owner thereof.

Punishment.-14 years.

Personating any person with fraudulent intent: Code 4.56.

Punishment .- 14 years.

Acknowledging Deed, or consent for judgment, or recognizance of bail, in the name of another, without authority or excuse: Code 549.

Punishment.-Seven years.

Limitation, in the above cases .- None

Tribunal. - Sessions. Magistrate on consent.

Personation in Elections: Dominion Elections, R.S.C. c. 8, ss. 89, 90, 103; Ontario Elections, R.S.O. c. 9, ss. 167, 168; Municipal Elections (Ont.), R.S.O. c. 223, s. 193 (1).

Poisoning.—See Administering Poison, Drugging.

Preservation of the Peace Near Public Works: Code 117, 118.—R.S.C. e. 151, App. to Criminal Code. See Public Meetings.

Preservation of the Peace at Public Meetings: Code 113, 114, 115.—R.S.C. c. 152, App. to Criminal Code. See Public Meetings.

Polygamy: Code 278 as amended by the Act of 1900.

Form of Cha.ge (s.-s. (a)).—That A.B., a man, did unlawfully practice polygamy with C.D. and E.F., two women, or agree, or consent with C.D. and E.F., two women, to practice and enter polygamy together, that is to say, to enter into a conjugal union with both, the said C.D. and E.F. at the same time;

That A.B., at , on , did unlawfully live, or cohabit (or agree, or consent to live, or cohabit in a conjugal union with C.D., who then was married to another (woman, or man, as the case may be).

See other polygamous offences: Code 278 (b), (c), (d).

See also Bigamy.

Posting Immoral Books, or Obscene Matter.—See Indecent Books, etc.

Pool Selling.—See Gaming.

Prize-Fighting, Defined: Code 93.

Challenging: Code 93.

both.

Form of Charge.—That A.B., at , on , unlawfully did send, or publish (state in what manner), or did cause to be sent or published, or otherwise made known (state by what means), a challenge by A.B. to fight a prize-fight between the said A.B. and one C.D., that is to say, to fight an encounter or fight with fists or hands between the said A.B. and C.D., they meeting together for the purpose of such right by previous arrangement made between them.

Punishment. - Fine of \$100 to \$1000, or six months imprisonment, or

Engaging in as Principal: Code 94.

Form of Charge.—For that A.B. at on , did unnawfully as in preceding form).

Punishment.—Imprisonment for not less than three or more than twelve months.

Attending or Promoting: Code 95.

Form of Charge.—That A.B., at , on , was unlawfully present as an aid, or second, or surgeon, or umpire, or backer, or assistmanner) a prize-fight, to wit, an encounter, or fight (etc., as in preceding form).

Punishment.-\$50 to \$100 fine, or twelve months imprisonment, or

Leaving Canada to Engage in Prize-Fight: Code 96.

Punishment.—\$50 to \$400 fine, or six months imprisonment, or both. Tribunal.—In offences under Code 93-96, Justice, summarily. Limitation.—Six months.

See also R.S.C. c. 153, ss. 6, 7, 10 (unrepealed: App. to Criminal Code) which gives authority to the sheriff to suppress a prize-fight.

If the justice finds the fight was not an encounter for a prize, or money, but was bono fule the result of a dispute, he may either discharge the accused or impose a penalty not exceeding \$50: Code 97.

Prostitutes.—See Disorderly Conduct; Disorderly House.

Probate, or Letters of Administration, obtaining or using probate, etc., based on forged documents or false affidavits: Code 432.

Pickpockets.—See Theft from the Person.

Piracy, and piratical acts: Code 127-130.

Post-Letters, letter-bags, etc, offences respecting.—See Theft; Mail.

Prison, Breaking.—See Escape.

Prisoner, Escape of.—See Escape.

Procuring Woman or Girl.—See Seduction.

Promise of Marriage, Seduction Under.—See Seduction.

Public Meeting: offences against order: Code 113, 114, 115.—See Disturbing Meeting: Code 173.

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Public or Peace Officer, obstructing or assaulting.—See Assault; Obstructing Officer.

Public Officer, breach of duty by: Code 131-138.

See false statements and returns by; false accounts, Code 364; breach of trust, Code 135; selling or purchasing office, Code 137; corruption of, Code 132, 133; judicial corruption, Code 131; corruption in municipal affairs, Code 136.

Public Stores, offences respecting: Code 383 et seq.

Public Worship, disturbing. — See Disturbing Public Worship, etc.

Railways. Obstructing the Maintenance or Free Use of: Code 490.

Punishment.-Two years.

Deing Any of the Acts Mentioned in Code 250 with intent to injure or endanger any person, or any engine, etc., on a railway.

Punishment.-Imprisonment for life.

Or Any of the Acts Mentioned in Code 489, which are likely to injure property on railways, without endangering life.

Punishment .- Five years.

If done with intent to endanger life or person; imprisonment for life; Code 489 (2).

Tribunal.—Under Code 489, 490 or 250. Sessions. Magistrate on consent.

Limitation .- None.

Damaging Railway Property, or Defacing Notices, etc.; or entering a train with intent to travel without paying fure; or to obstruct an officer of the company in performing his duty; or trespassing on railway property: Dom. Stat. 1899, c. 37, s. 4, s.-ss. 2, 3.

Injuring Packages on Railways.—See Wilful Damage.

Negligently Endangering Persons on Railways: Code 251.—See Negligence.

Criminal Breaches of Contract by railways in respect to carriage of mails, passengers or freight: Code 521 (3) (4).

Criminal Breaches of Contract by which trains may be delayed or stopped: Code 521 (2).

Race, betting on a horse race not an offence: Code 204

Rafts, injuries to: Code 497,-See Wilful Damage.

Rape: Code 266.—Rape is the act of a man having carnal knowledge of a woman who is not his wife without her consent, or with consent which has been extorted by threats or fear of bodily harm, or obtained by personating the woman's husband, or by false and fraudulent representations as to the nature and quality of the act.

2. No one under the age of 14 years can commit this offence.

3. Carnal knowledge is complete upon penetration to any, even the slightest degree, and even without the emission of seed.

Every one who commits rape is guilty of an indictable offence and liable to suffer death, or to imprisonment for life: Code 267.

Every one is guilty of an indictable offence and liable to seven years imprisonment who attempts to commit rape: Code 268.

Form of Charge.—That at , on . A.B., a man, did unlawfully have carnal knowledge of C.D., a woman, who was not his wife, without her consent; or with her consent, which was there and then unlawfully extorted by threats, or fear of bodily harm, or which husband of the said C.D., or by false and fraudulent representations as tons).

Attempt.—That at , on , A.B., a man, did unlawfully attempt to have carnal knowledge of C.D., a woman, who was not his wife, without her consent (if with her consent obtained by fraud, add the atlegations in the preceding form).

Tribunal.—In cases of rape, or attempted rape, Superior Court.

Justice or Magistrate to hold preliminary enquiry.

Receiving Stolen Property. - See Theft.

Rescue.—See Escape.

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Restraint of Trade, Combinations in. — See Trade Offences.

Rewards, Corruptly Taking, for procuring the return of property which has been stolen, etc: Code 156.

Form of Charge.—That A.B., at , on , did unlawfully and corruptly take from C.D. a sum of money, to wit, (state the amount), or a certain reward (state what) for, and under the pretence (or upon

account of) the said A.B., helping the said C.D. to recover certain money, or a certain chattel, or valuable security (or other property, naming it), which had theretofore been unlawfully stolen from the said C.D. (or state the circumstances shewing that the property had been obtained from the owner by an indictable offence), he, the said A.B., not having used all due diligence to cause the offender to be brought to trial for the said offence of stealing (or as the case may be) the said money or chattel.

Tribunal.—Sessions. Magistrate on consent.

Limitation.-None.

Punishment.-Seven years.

Advertising a Reward for stolen property, is not punishable as a criminal offence; and the penalty for so doing in contravention of Code 157 can only be recovered by an action.

Riots, and Unlawful Assemblies.

Unlawful Assembly; Definition: Code 79 .- An unlawful assembly is an assembly of three or more persons who, with intent to carry out any common purpose, assemble in such a manner or so conduct themselves when assembled as to cause persons in the neighbourhood of such assembly to fear, on reasonable grounds, that the persons so assembled will disturb the peace tumultuously, or will by such assembly needlessly and without any reasonable occasion provoke other persons to disturb the peace tumultuously.

2. Persons lawfully assembled may become an unlawful assembly if they conduct themselves with a common purpose in such a manner as would have made their assembling unlawful if they had assembled in that manner for that

3. An assembly of three or more persons for the purpose of protecting the house of any one in their number against persons threatening to break and enter such house in order to commit any indictable offence therein is not unlawful.

Riot; Definition: Code 80. - A riot is an unlawful assembly which has begun to disturb the peace tumultuously.

Every member of an unlawful assembly is guilty of an indictable offence and liable to one year's imprisonment: Code 81.

Every rioter is guilty of an indictable offence and liable to one year's imprisonment: Code 82.

Tribunal .- In cases under Code 81 or 82: Sessions. Magistrate on consent.

Limitation .- None.

Dispersing Riotous Assemblies, by reading the "Riot Act," nd by calling out the militia: Code 8.1.—It is the duty of every sheriff, deputy sheriff, mayor or other head officer, and justice of the peace, of any county, city or town, who has notice that there are within his jurisdiction persons to the number of twelve or more unlawfully, riotously and tumultuously assembled together to the disturbance of the public peace, to resort to the place where such unlawful, riotous and tumultuous assembly is, and among the rioters, or as near to them as he can safely come, with a loud voice to command or cause to be commanded silence, and after that openly and with loud voice to make or cause to be made a proclamation in these words or to the like effect:—

Proclamation.—"Our Sovereign Lord and King charges and commands all persons being assembled immediately to disperse and peaceably to depart to their habitations or to their lawful business, upon the pain of being guilty of an offence on conviction of which they may be sentenced to imprisonment for life.

"GOD SAVE THE KING."

2. All persons are guilty of an indictable offence and liable to imprisonment for life who—

(a) with force and arms wilfully oppose, hinder or hurt any person who begins or is about to make the said proclamation, whereby such proclamation is not made; or

(b) continue together to the number of twelve for thirty minutes after such proclamation has been made, or if they know that its making was hindered as aforesaid, within thirty minutes after such hindrance.

Tribunal.—Sessions. Magistrate on consent. Limitation.—One year: Code 551 (c).

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Duty of Justice if Rioters do not Disperse: Code 84.—
If the persons so unlawfully, riotously and tumultuously assembled together as mentioned in the next preceding section, or twelve or more of them, continue together, and do not disperse themselves, for the space of thirty minutes after the proclamation is made or after such hindrance as aforesaid, it is the duty of every such sheriff, justice and other officer, and of all persons required by them to assist, to cause such persons to be apprehended and carried before a justice of the peace: and if any of the persons so assembled is killed or

hurt in the apprehension of such persons or in the endeavour to apprehend or disperse them, by reason of their resistance, every person ordering them to be apprehended or dispersed, and every person executing such orders, shall be indemnified against all proceedings of every kind in respect thereof: Provided, that nothing herein contained shall, in any way, limit or affect any duties or powers imposed or given by this Act as to the suppression of riots before or after the making of the said proclamation.

Suppression of Riots by Magistretes: Code 40.—Every sheriff, deputy sheriff, mayor or other head officer or acting head officer of any county, city, town or district, and every magistrate and justice of the peace, is justified in using, and ordering to be used, and every peace officer is justified in using, such force as he, in good faith, and on reasonable and probable grounds, believes to be necessary to suppress a riot, and as is not disproportioned to the danger which he, on reasonable and probable grounds, believes to be apprehended from the continuance of the riot.

Suppression of Riot by Perrins Aring Under Lawful Orders: Code 41.—Every one, whether subject to military law or not, acting in good faith in obedience to orders given by any sheriff, deputy sheriff, mayor or other head officer or acting head officer of any county, city, town or district, or by any magistrate or justice of the peace, for the suppression of a riot, is justified in obeying the orders so given unless such orders are manifestly unlawful, and is protected from criminal responsibility in using such force as he, on reasonable and probable grounds, believes to be necessary for carrying into effect such orders.

2. It shall be a question of law whether any particular order is manifestly unlawful or not.

Suppression of Riot by Persons Without Orders: Code 42.—Every one, whether subject to military law or not, who in good faith and on reasonable and probable grounds, believes that serious mischief will arise from a riot before there is time to procure the intervention of any of the authorities aforesaid, is justified in using such force as he, in good faith and on reasonable and probable grounds, believes to be necessary for the suppression of such riot, and as is not disproportioned to the danger which he, on reasonable grounds, believes to be apprehended from the continuance of the riot.

Militia to Obey any Lawful Command Given by Superior Officer fo. the Suppression of Riots: Cale 4.1 .- Every one who is bound by military law to obey the lawful command of his superior officer is justified in obeying any command given him by his superior officer for the suppression of a riot, unless such order is manifestly unlawful.

2. It shall be a question of law whether any particular order is manifestly unlawful or not.

Peace Officers and those assisting him are justified in arresting without a warrant anyone he finds committing a breach of the peace, or whom he, on reasonable and probable grounds, believes to be about to join in or renew such breach of the peace: Code .19.

Neglect of Pence Officer to Suppress Riot: Cole 140 .-Every one is guilty of an indictable offence and liable to two years imprisonment who, being a sheriff, deputy-sheriff, mayor, or other head officer, justice of the peace, or other magistrate, or other peace officer, of any county, city, town or district, having notice that there is a riot within his jurisdiction, without reasonable excuse omits to do his duty in suppressing such riot.

Neglect to Aid Peace Officer in Suppressing Riot: Code 141.—Every one is guilty of an indictable offence and liable to one year's imprisonment who, having reasonable notice that he is required to assist any sheriff, deputy sheriff, mayor, or other head officer, justice of the peace, magistrate, or peace officer, in suppressing any riot, without reasonable excuse omits so to do.

Riotously Demolishing or Beginning to Demolish a Building, etc : Code 85.

Punishment. - Fourteen years.

Riotously Injuring Buildings, etc.: Code 86.

Punishment. -- Seven years.

Tribunal. -- Sessions. Magistrate on consent.

Limitation,-None.

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Bona fide claim of right no defence under these sections: Code 86 (2).

Inciting Indians to Riotous Acts: Code 94.

Robbery.—See Theft: Code 397-400.

Seditious Offences: Code 120-124.

Seduction and Defilement of Women.-Carnally knowing girl under 14: Code 269; attempts: Code 270.

If the child is of too tender years to understand the nature of an oath, her unsworn statement may be taken: Can. Ev. Act, 1893, s. 25.

As to evidence of age: see Code 701 A, in the Act of 1900.

Form of Charge.—That A.B., at on , did unlawfully carnally know C.D., a girl then under the age of fourteen years. and she not being the wife of the said A.B.

Punishment. - imprisonment for life and whipping; or an attempt, two years and whipping.

Seducing or Having Illicit Connection with a girl of previous chaste character, and between the ages of 14 and 16 years: Code 181, as amended by the Act of 1893.

Proof of Age: Code 701 (a), in Act of 1900.

Form of Charge.—That A.B., at , on , did unlawfully seduce (or have illicit connection) with C.D., a girl of previous character, she then being under the age of sixteen years, and of, or above the second form. above, the age of fourteen years.

Punishment. -Two years.

Seduction and illicit connection with an unmarried woman under the age of 21, under promise of marriage: Code 182.

The burden of proof of previous unchastity is on the accused: Code 183A. in the Act of 1900.

sorm of Charge.—That A.B., at , on , he then being above the age of twenty-one years, did unlawfully seduce and have illicit connection with C.D., under promise of marriage, she, the said C.D., then being an unmarried female of previous chaste character, and under the age of twenty-one years.

Punishment .- Two years.

Seel, etion or illicit connection with a female of previously chaste character and under the age of twenty-one years, and employed in a factory, by her employer or co-worker, etc.: Amended Code 183 in the Act of 1900.

Form of Charge. - That, etc., A.B. did unlawfully seduce (or have illicit connection with) C.D., a female of previously chaste character, and then under the acceptance of the content of and then under the age of twenty-one years, and being then in the employment of the said A.B. in a factory (or mill, etc.), or she then being in a common employment with the said A.B. in a factory (or mill, etc.), and then and there being under or subject to his control or direction (state how), or she then receiving her wages or salary from him, the said A.B.

Punsahment, -Two years.

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Seduction or illicit connection with ward by guardian: Amended Code 186 in Act of 1900,—"Guardian" defined by Code 186A, in the Act of 1900,

Form of Charge.—That A.B., at , on , he then being the guardian (or then having the custody or control) of C.D., did then and there unlawfully seduce or have illicit connection with the said C.D. Punishment.—Two years.

Neducton and illicit connection with a female passenger (by any of the means stated) by the master or any person employed on board a vessel: Code 184.

This offence is within the jurisdiction of the Canadian courts even if committed (on a British vessel) on the Great Lakes, or anywhere within the jurisdiction of the Admiralty, if the offender is afterwards found in Canada. See the chapter on offences committed at sea, supper.

Punishment. -\$400 fine or 1 year's imprisonment.

The subsequent marriage of the parties is a good defence in cases under Code 182, 183, 184, except in the case of Guardian and Ward: Code 184 (2).

Parent or Guardian of a woman or girl procuring or permitting her defilement, or receiving the avails of it: Code 186.

Punishment.—If she is under 14 years old, fourteen years imprisonment, or if over that age, five years imprisonment.

As to evidence of age: Code 701 (a) in the Act of 1900.

"Guardian" defined by Code 186 (a) in the same statute.

Procuring the defilement of a woman or being guilty of any of the offences set out in Code 185.

Punishment,-Two years.

As to search warrants for women inveigled into a house of ill fame, see Code 574.

Householder permitting the defilement on the premises of a girl under 18: Amended Code 187 in the Act of 1900.

Punishment.—If she is under 14, ten years; if over 14 and under 18, two years imprisonment.

Conspiracy to Defile a Woman: Code 188.—See Conspiracy.

Carnally Knowing an Idiot: Code 189 as amended by the Act of 1900.

Punishment. -- Four years.

Prostitution of an Indian Woman: Code 190.

Punishment.-Fine \$10 to \$100, or six months.

Corroborative evidence is required in all cases under Code 181-190 before conviction, but not before a committal for trial on a preliminary enquiry before a justice or magistrate. See observations on the subject of corroborative evidence, supra.

Tribunal.—In all cases under Code 181-190. Sessions. Magistrate on consent.

Limitation.—In cases under Code 181-183, 185-187, one year; in other cases, none.

For provisions as to the award of whipping see Code 957 in the Amendment Act, 1900.

Ships.—Sending or taking unseaworthy, or overloaded, or insufficiently manned ships to sea: Code 257.

Tribunal.-Sessions. Magistrate on consent.

Limitation .- None.

Punishment .- Five years.

Consent of Minister of Marine is required before prosecution: Code 546.

Shouting, Screaming or singing so as to create disturbance on or near a street: Code 207 (f).—See Disorderly Conduct

Signals-Wilful Interference with Marine Signals: Code 495.

Tribunal. - Sessions. Magistrate on consent.

Limitation .- None.

Punishment. - Seven years.

Making Fast a Vessel or Boat to Marine Signal, Buoy, etc.: Code 495 (2).

Tribunal.-Justice or Magistrate, summarily.

Limitation .- Six months: Code 841.

Punishment.-\$10 fine, or one month in default.

Sodomy: Code 174.

Attempt to Commit: Code 175.

Form of Charge.—That A.B., at , on , did unlawfully, wickedly, and against the order of nature, commit (or attempt to

commit) the abominable crime of buggery with (state whether with human being or any other living creature, stating what).

Tribunal .- Sessions. Magistrate on consent.

Limitation. - None.

Punishment.-Imprisonment for life; or for attempt, ten years.

Soldiers-Enticing to Desert, etc.: Code 75.

Spreading False News.—See False News.

Spring Guns or mantraps dangerous to human life: Code 249.

Tribunal. - Sessions. Magistrate on consent.

Limitation .- None.

Punishment .- Five years.

See exception in s.-s. 3.

Street Walkers: Code 207 (1).—See Disorderly Conduct.

Suicide, Attempting: Code 238.

Punishment.—Two years.

Counselling, Aiding or Abetting: Code 237.

Punishment. - Imprisonment for life.

Tribunal.—Sessions. Magistrate on consent.

Limitation .- None.

Form of Charge. - That A.B., at , on , did unlawfully attempt to commit suicide.

Sureties to Keep the Peace. - See Articles of the Peace.

Tenants, Wilful Injuries to Buildings by: Code 504 ---See Wilful Damage.

Telegraphs, Obstructing the Working of: Code 491.

Tribunal. - Sessions. Magistrate on consent.

Limitation .- None.

Punishment .- Two years.

Theft. Defined, and the Law Stated: Code 30.3-313.

A magistrate or two justices have jurisdiction to try summarily, without consent, theft under \$10 in value: Code 783, as amended in 1900.

See also Code 784 (as amended in 1900), 787, 788.

A magistrate may, with accused's consent, try theft of over \$10: Code 789; or try the same as an indictable offence under Code 785, 786, as amended in 1900.

Some cases of theft may be tried by a justice summarily. See those so indicated infra.

, did unlawfully Form of Charge.—That A.B., at steal (state what), the property of C.D. , on

Theft by Agents, Trustees, etc.: Code 308-310, 320. Punishment.-Fourteen years.

, having thereto. fore received from C.D., a sum of money (state amount), or a certain (state what, e.g., 500 bushels of wheat), on terms requiring him, the said Form of Charge. - That A.B., at A.B., to account for, or pay over the said money (or the proceeds of the said wheat) to one E.F. (or to the said C.D.), he, the said A.B., did afterwards, to wit, at the time and place aforesaid, unlawfully and fraudulently convert the said money (or the proceeds of the said wheat) to his own use, or did unlawfully and fraudulently omit to account for, or pay over the said money (or the proceeds of the said wheat) to the said E.F. (or to the said C.D.).

Bank Employee: Code 319 (b). Punishment.-Fourteen years.

Form of Charge.—That, etc., A.B., being there and then employed as Cashier (or other officer) of the Bank of , did unlawfully steal a Cashier (or other officer) of the Bank of , did unlawfully steal a sum of money, to wit, (amount), or a certain bond (or as the case may be, describing it), of the said Bank; or a bond (or state what) belonging to one C.D., which was there and then deposited or lodged with the said Bank of

Clerks and Servants: Code 319 (a).

Punishment.-Fourteen years.

Form of Charge.—That A.B., etc., being then and there employed in the capacity of a Clerk to C.D., did unlawfully steal (state what), belonging to, or then and there in the possession of the said C.D.

Civil Servants and Employees: Code 319 (c).

Punishment. - Fourteen years.

Municipal Officers: Code 319 (c).

Punishment.-Fourteen years.

Public Officers, etc., failing to deliver up moneys, books, etc: Code 321.

Punishment.-Fourteen years.

As to Form of Charge Against Public Employees: see Code 622, 623.

By Tenants or Lodgers: Code 322. Punishment.-Is graded according to value.

As to Form of Charge: see Code 625.

Form of Charge. - That, etc., did unlawfully steal a certain chattel, or fixture, to wit (state what) which had theretofore been let by C.D., the owner thereof, to be used by the said A.B. in (or with) a house, or lodging, namely (describe it).

By Co-owners in Gold or Silver Mines: Code 311.

Punishment.—Seven years; second conviction, ten years: Code 356.

Fraudulent Concealment by the same: Code 313.

Punishment.—Two years: Code 354.

By Husband and Wife when living apart: Code 313. Punishment.—Seven years: Code 356.

Receiving Goods Stolen by Husband or Wife while living together: Code 313.

Punishment.-Seven years: Code 356.

By Person Entrusted with Goods for Manufacture:

Punishment .- Two years.

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Theft of Testamentary Instruments defined by Code 3 (ee):

Punishment.-Life imprisonment.

Of Documents of Title to Land, defined by Code 3 (h):

Punishment.—Three years.

Destroying Documents of Title to Goods or Lands, fraudulently; definition Code 3 (g): Code 353.

Punishment.—Same as for theft: seven years: Code 356.

Judicial Documents: Code 325.

Punishment.-Three years.

Railway or Steamboat Tickets: Code 3.10.

Punishment.-Two years.

Election Documents: Code 3.29.

Punishment.—Fine in discretion of court, or seven years, or both.

Live Cattle, defined by Code 3 (d): Code 331.

Punishment. - Fourteen years.

Form of Charge.—That A.B., etc., did unlawfully steal a horse or steer (or as the case may be) the property of C.D.

Fraudulently Keeping or refusing to give up Stray Cattle, or defacing, etc., the brands thereon: Code 331 A, in the Act of 1900.

Punishment.-Three years.

Form of Charge.—That A.B., etc., without the consent of C.D., the owner of a certain steer which was found astray, did fraudulently take (or hold or as the case may be, following the words of the statute) the said

steer, or did fraudulently wholly (or partially) obliterate (or alter or deface) a brand mark (or make a false brand mark) on the said steer, or did unlawfully and without reasonable cause refuse to deliver up the said steer to the said C.D., or to E.F., who was then and there in charge thereof on behalf of the said C.D., or who was authorized by the said C.D. to receive the said steer.

Brands are prima facie evidence of ownership in such cases: Code 707 in the Act of 1900.

Killing Any Living Creature with intent to steal: Code .307.

Punishment.—The same as for stealing the animal, etc., killed.

Form of Charge.—That A.B., etc., did unlawfully kill one (state what) the property of C.D., with intent to steal the hide or the carcase, or a part of the caronse thereof.

Stealing Things fixed to land or buildings: Code 3.35.

Punishment. - Seven years.

Trees in Pleasure Grounds, etc., and of over \$5.00 in value, or of over \$25.00 if elsewhere: Code 336.

Punishment.-Two vears.

Timber Found Adrift or cast ashore, or defacing marks on same, or refusing to give up to owner: Code 338.

Punishment.-Three years.

Taking Away, either openly or clandestinely, and whether claiming to be the owner or not of goods.

Undue Seizure by a public or peace officer as such: Code 306 in Act of 1900.

Punishment.—Seven years.

This does not include things under seizure for distress for rent, or by person having a lien, etc.

Form of Charge. That A.B., etc., did take or carry away (or cause. etc.), without lawful authority, certain property, to wit (describe it), which was then and there under lawful seizure and detention by a public officer or peace officer in his official capacity, to wit (state for what the goods were seized).

Ores and Metals: Code 343.

Punishment .- Two years.

See exception in s.-s. 2.

Wreck, defined by Code 3 (dd): Code 350.

Punishment .- Seven years.

, did unlawfully , on Form of Charge. - That A.B., at steal (describe the article), which was then and there a portion of the cargo (or as the case may be) of a certain vessel which had been then and there sunk, or stranded and wrecked.

Oysters or Oyster Broods: Code 3.14.

Punishment .- Seven years.

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See Code 619 as to essentials in form of charge.

Post Letter Bag, Letter or other Mail Matter: Code 3.26.

Punishment.-Imprisonment for life, or not less than three years.

Form of Charge.—That A.B., at , on , did unlawfully steal one post letter bag, the property of the Postmaster-General of or

A post letter from a post letter bag, or from the post-office at or from C.D., a Mail Clerk on the Grand Trunk Railway, then and there employed in the business of distributing and delivering the mail (or as

A post letter, the property of the Postmaster-General of Canada, which said letter contained a sum of money, or a valuable security, or chattel (stating what);

Certain money, or a certain valuable security, or chattel (stating what) of Canada.

Stealing a Letter or Parcel sent by post; otherwise than from the post-office or from a P.O. official: Code 3.27.

Punishment. -- Three to seven years.

Samples Sent by Mail: Code 328.

Punishment,-Five years.

Stopping the Mail with Intent: Code 401.

Punishment.-Life imprisonment.

See also Code 624.

For definition of "Mail," "Mailable Matter," "Post Letter," "Post Letter Bag," "Post Office": see Code 4; see also the Post Office Act.

Stealing Anything in a Dwelling, if of the value of \$25; or with menaces: Code 345.

Punishment .- Fourteen years.

Form of Charge.—That A.B., on , at , in a certain dwelling house of C.D., then and there situated, did unlawfully steal certain goods and chattels of C.D., to wit, (describe), the said goods then being of the value of \$25 at least; or the said A.B., by menace or threat, to wit, (state st, e.g., by pointing a pistol at, and threatening to shoot one E.F., then lawfully being in the said dwelling house), did put the said E.F. in bodily fear.

Stealing in Dwelling House (of anything of less than \$25 in value and without menaces): Code 356.

Punishment. - Seven years.

Stealing by Means of Picklock, False Key, etc.: Code 346.

Punishment .- Fourteen years.

Stealing in a Factory, etc.: Code 347.

Punishment.-Five years.

Stealing from Ships, Wharves, etc.: Code 349.

Punishment,-Fourteen years.

Form of Charge.—That A.B., etc., did unlawfully steal certain goods or merchandize, to wit, (state what), in a vessel called the , in the harbour or port of , being the port of entry or discharge of said vessel; or from a certain dock or wharf adjacent to the port of (etc., as above).

Stealing on Railways: Code 351.

Punishment.-Fourteen years.

Form of Charge.—That A.B., etc., did unlawfully steal in or from the railway station of the Railway at , or from the engine, or tender, or passenger car, or freight car on the said railway (or as the case may be), a certain (state the article), the property of C.D.

Theft by Fraudulent Concealment: Code 354.

Punishment .- Two years.

Robbery: Code 399.

Punishment .- Fourteen years.

Definition of: Code 397.

Form of Charge.—That, etc., A.B., did unlawfully steal from the person (or in the presence of C.D.), certain goods and chattels (state what), with violence, or with threats of violence (state what threats or violence), then and there used by the said A.B. to the said C.D. to extort the said goods and chattels from the said C.D., or to prevent or overcome resistance on the part of the said C.D. to the said goods and chattels being so stolen by the said A.B.

Assault with Intent to Rob: Code 400.

Punishment.-Three years.

Robbing and Wounding: Code 398 (a).

Punishment.-Imprisonment for life and whipping.

Form of Charge.—That A.B., etc., did unlawfully steal (as in the foregoing form), and at the time of, or immediately before, or immediately after such robbery by the said A.B., he, the said A.B., did unlawfully wound, or beat, or strike, or use personal violence (stating what) to the said C.D.

Robbery or Assault with Intent: by a person accompanied by one or more others: Code 398 (b).

Panishment.-Imprisonment for life and whipping.

Armed Person Committing Robbery: Code 398 (c).

Punishment. -- Imprisonment for life and whipping.

Form of Charge.—That A.B., etc., then being armed with an offensive weapon, or instrument, to wit (state what), did (proceed as in Form 39

Assault with Intent by Armed Person: Code 398 (c).

Punishment, -Imprisonment for life and whipping.

See Code 957, in the Act of 1900, as to award of whipping.

Theft from the Person: Code 344.

Punishment. - Fourteen years.

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Form of Charge. - That A.B., etc., did unlawfully steal a certain chattel, or valuable security, or a certain sum of money (describing what was stolen), from the person of C.D.

Valuable Security defined: Code 3 (cc).

Sending Threatening Letters demanding anything with menaces and without reasonable and probable cause: Code 403.

Punishment, -Seven years.

Demanding with Menaces: Code 404.

Punishment .- Two years.

Extortion by Threats of Accusing of any of the Crimes mentioned in Code 405.

Punishment.-Fourteen years.

See Extortion.

By Any Other Threats: Code 406.

Punishment. - Seven years.

Receiving or Retaining in Possession Stolen Goods: Code 314.

Punishment. - Fourteen years.

See definition, etc.: Code 3 (k); Code 627, 715-717; see Accessories supra.

Receiving Goods Stolen by Husband or Wife: Code 31.3.

Punishment. - Seven years: Code 356.

Receiving Stolen Letter Bug, Post Letter, etc.: Code 315. Punishment.-Five years.

See other cases infra.

Form of Charge.—That A.B., etc., did unlawfully receive, or retain in his possession (state the article), the property of C.D., and which had

been theretofore obtained by one E.F., by an offence punishable on indictment, to wit, by theft (or other indictable offence, describing is), the said A.B. then knowing the said , to have been obtained by the said E.F. by the said indictable offence.

Bringing Stolen Goods into Canada or Having Same Therein: Code 355.

Punishment, -Seven years.

Embezzlement is Theft under the circumstances stated in:

Punishment. - Seven years: Code 356.

See also Code 308-310, 319-320.

False Pretences, definition, Code 358; obtaining anything by is theft, Code 359.

Punishment.-Three years.

Theft of Things not otherwise provided: Code 356.

Punishment.—Seven years; second offences, ten years: Code 356 (2).

If the article stolen is worth over \$200, two years imprisonment is added in each case: Code 357.

Attempts to Commit Thefts.—See Code 64, and Attempts, supra.

Thefts by Juveniles.—See supra chapter on Juvenile

Tribunal in any of the foregoing cases of Theft. Sessions. Magistrate on consent. Justice to hold a preliminary enquiry.

Limitation of time to prosecute-none.

The following cases of theft may lo tried by a magistrate or two justices summarily, without consent: Theft, False Pretences, or Receiving of Things Not Exceeding \$10 in Value: Code 783 (a) (b).

See Code 784, 787, 788, as to punishment, etc.

Limitation .- Six months: Code 841.

The following cases of theft may be tried summarily by a justice without consent: Theft of Trees, etc., of the value of 25 cents or upwards: Code 337.

Punishment.—\$25 fine over and above the injury done; second offence, three months.

Theft of Fences, Gates, etc.: Code 339.

Punishment.—\$25 fine over and above the value of the thing stolen; second offence, three months.

Person having tree, etc., in his possession and failing to satisfy the justice that it has been lawfully obtained: Code 340.

Theft of roots, fruit or vegetables, etc., in gardens: Code 341

Punishment. - \$20 fine over and above the damage, or one month; second offence, three months. If not in garden, etc.: Code 342, fine \$5 or one

Theft of Domestic Cayed or Enclosed Animals, Birds, etc.: Code 332 as amended in 1900.

Punishment. - \$20 fine over and above the value of the animal, etc., or one month: second offence, three months.

If the animal is worth over \$20, the offence is indictable, and may be tried by a magistrate on consent.

Punishment. -\$30 fine over and above the value of the animal, or two

Taking or Killing Tame Pigeons (the act not being one of theft): Code 3.3.3.

Punishment. - Fine, \$10 over and above value.

Theft of Things in Indian Graves: Code 350.

Punishment. - Fine, \$100, or three months.

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Limitation. - In ease, of summary offences, six months: Code 841.

Stolen Property, Advertising or receiving reward for: Code 157.

Trade - Offences Relating to. Trude Combines .- Definition: Code 516, 517, 519; Exceptions, Code 518; and Amendments, by the Statute of 1899, c. 40.

Tribunals and appeals from judge under speedy trials clauses (Code 762-781): see 52 Viet., c. 41, ss. 4, 5.

Conspiracies in Restraint of Trade: Code 520 in Amending Act, 1900.

Trades Unions Excepted: ('ode 524(2); see also R.S.C. c. 131, s. 22.

Tribunal. - Superior Court. Justice or Magistrate to hold preliminary enquiry. Limitation. - None.

Punishment.—Fine, \$200 to \$4,000; or if a corporation, \$10,000.

Form of Charge (see Code 520 in amended Act, 1900) .- That A.B., at , on , unlawfully combined, agreed and arranged with C.D. (or with any of the incorporated companies referred to in Code 520, naming it) to unduly limit the facilities for transporting, or producing,

or manufacturing, or supplying, or dealing, in an article, or commodity, which is a subject of trade and commerce, to wit, (name the article), or to restrain or injure trade or commerce in relation to an article or to restrain or injure trade of commerce in relation to an article of commodity, which is a subject of trade and commerce, to wit, (name the commodity, which is a subject of trade and commerce, to wit, (name the production, or unduly prevent, or limit, or lessen competition in the production, or manufacture, or purchase, or barter, or sale, or transportation, or supply of a subject of trade and commerce, to wit, (name the article of commerce), or in the price of insurance upon person or property.

See also 51 Vict., c. 41, ss. 15-23, in App. to Criminal

Trade Marks, Forgery of: Code 443-447.

Selling Goods Falsely Marked: Code 448, 449 in Amendment Act, 1900.

Tribunal. -- Sessions. Magistrate on concent.

Code 450 (b) does not apply, and only applies to prosecutions for offences under ss. 451, 452: R. v. Eaton, 2 Can. Cr. Cas. 252.

Limitation .- Three years: Code 551.

Punishment. - Fine in discretion of Court, no amount being mentioned; or two years, or both: Code 450.

The goods by or in relation to which the offence is committed may be forfeited: Code 450 (2); see also 51 Vict., c. 41, ss. 15-22 (unrepealed: App. to Criminal Code), as to disposal of same, etc.

Falsely Claiming to Have a Poyal or Government Warrant: Code 451.

Tribunal.-Justice or Magistrate, summarily.

Limitation .- Six months: Code 841.

Punishment.—Six months, or fine of \$250: Code 450 (b).

Importing Goods Bearing False Trade Mark as to Place of Manufacture: Code 452.

Tribunal.-Justice or Magistrate.

Limitation .- Six months.

Punishment.-Fine of \$100 to \$400.

Defences: Code 453-455.

Infraction of Customs Laws: 60-61 Vict., c. 16, s. 14.

Inland Revenue Act: R.S.C. c. 34, s. 3, amended by Act of 1897, c. 19, s. 6, and 1898, c. 27, s. 3; R.S.C. c. 34, s. 162, in amendment of 1897 (c. 19, s. 7); and amendment of s. 183 by Act of 1897, c. 19, s. 9; R.S.C. c. 34, ss. 317, 334, amended by the same statute of 1897, ss. 9-20.

Act Respecting the Branding of Butter and Cheese; 60-61 Vict., c. 21.

Adulteration Act: R.S.C. c. 107, amended by the Act of 1898, c. 24.

Vagrancy: Cale 207, 208, amended in 1900.-See Disorderly Con Juct.

Wages .- See Betting.

Warehousemen and others giving or using false receipts for goods: Code 376.

Punishment. - Three years.

Tribunal. - Sessione. Magistrate on consent.

Limitation .- None.

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Weapons, Offensive, definition, Code 3 (r); exceptions Code 112.

Carrying or having in possession or custody weapon for a purpose dangerous to the public peace: Code 103; definition of "possession": Code & (k).

Limitation.—Bix months: Code 551.

Punishment .- Five years.

Smugglers or others having possession of contraband goods, and carrying offensive weapons: Code 104. Limitation .- None.

Punishment .- Ten years.

Coming Armed within one mile of a public meeting on day of meeting: Code 114.

Limitation .- One year: Code 551.

Punishment. -Fine \$100 or three months, or both.

A Justice of the Peace is authorized to take away weapons from persons at or near a public meeting: R.S.C. c. 151 (unrepealed: App. to Criminal Code).

Refusal to deliver up arms at public meeting on demand by a justice: Code 113.

This is an indictable offence on which the offender may be arrested and tried before the Sessions, or by a magistrate on

Punishment. -- Five years: Code 951. Limitation. - One year: Code 551.

And by Code 113 (2) the justice who makes the demand for delivery of the weapon may, then and there, record the refusal, and adjudge that the offender pay a fine not exceeding \$8, and may proceed to enforce it by warrant of distress or commitment as provided by Code 872. If a distress warrant is ordered first, the justice may verbally or by warrant order the offender to be detained in safe custody until the return of the distress warrant: Code 876.

In case the justice proceeds summarily as above, he should, as far as practicable, pursue the usual forms of proceeding in summary cases, calling on the accused to shew cause, hearing any evidence offered on both sides on the question whether the accused is in possession of an offensive weapon, as charged, adjudicating openly, etc.

Two or More Persons Carrying Weapons: Code 103.

Form of Charge.—That A.B. and C.D., at , on , being together, did both of them then and there openly carry offensive weapons, to wit (state what), in a public place, to wit (state where), and in such a manner and under such circumstances as were calculated to create terror and alarm (state the manner and circumstances).

Punishment.—\$10 to \$40, or thirty days on default of payment. Limitation.—One month: Code 551.

Carrying a Pistol or Air Gun: Code 105.

Punishment. - \$5 to \$25, or one month. Tribunal. - Justice summarily. Limitation. - One month: Code 551.

Form of Charge.—That A.B., etc., did unlawfully have upon his person a piatol (or air gun) elsewhere than in his own dwelling house, shop, warehouse or counting house, to wit (state where): the said A.B. not then being a justice, or a public officer, and not then being a soldier, sailor or volunteer in His Majesty's service, and then and there on duty, or a constable or other peace officer and the said A.B. not then and there having a Certificate of Exemption issued by a Justice of the Peace, and not having at the said time and place reasonable cause to fear an assault or other injury to his person, family or property.

A Justice may Grant a Certificate of permission to carry weapons for not more than twelve months to any one not under 16 years old, and as to whose discretion and good character he is satisfied upon evidence upon oath, and if sufficient cause is shewn on oath, e.g., that there is reasonable cause to fear an assault or other injury to his person, family, or property: Code 105 (2).

Form of Certificate.—I, the undersigned, one of His Majesty's Justices of the Peace in and for the of , do certify that sufficient cause has been shewn upon oath before me, to my satisfaction, on

behalf of A.B., of the person not under the age of sixteen years, and as to whose discretion and good character I am satisfied by evidence taken before me on oath; and that he, the said A.B., is hereby exempted from the operation of section 105 of the Criminal Code of Canada for the period of

Given under my hand and seal at the said , A.D. 19

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Justice of the Peace,

The justice granting such certificate is to make a return County of of his having done so to the officer to whom justices' quarterly returns are required by Code 902 to be made, r.g., in Ontario to the clerk of the peace: Code 105 (4).

Default in Making such Return within ninety days is an offence: ('ode 10% (4); and punishable on memmary conviction before a justice by a fine not exceeding \$10.

Limitation. -81x months: Code 841.

Selling Pistol or Air Gun to a Minor: Code 106.

Form of Charge. - That A.B., etc., did unlawfully sell, or give, a pistol, or air gun, or certain ammunition for a pistol or air-gun to a minor under the age of 16 years.

Limitation. - One month: Code 551.

Selling a Pint. Air Gun to any person without keeping a record of such sale, with date, name of purchaser, and name of maker, or other mark by which the arm may be Punishment, -- \$25.

Form of Charge.—That A.B., etc., did unlawfully sell a pistol, or an air gun, to another person without keeping a record of such sale, and the date thereof, and the name of the purchaser thereof, and of the name of the maker of the said pistol, or air gun, or of any other mark by which the said pistol, or air gun, could be identified.

Tribunal.—In offences under Code 103, 105, 105 (2), 106, 106 (2): a Justice or Magistrate, summarily. Limitation. - One month: Code 551.

Having Weapons on the Person when Arrested: Code 107.

Form of Charge. - That A.B., etc., having been then and there arrested on a warrant issued against him by C.D., Esquire, a Justice of the Peace in and for the the offence); or having been then and there duly arrested while committing an offence, to wit, (state the offence), did then and there unlawfully have upon his person when so arrested, a pistol, or an air gun:

Punishment, -Fine of \$20 to \$50, or three months.

Having Pistol or Air Gun on the Person with Intent therewith unlawfully to injure any one: Code 108.

Punishment .- Fine \$50 to \$200, or six months.

Pointing Firearm (Loaded or not) at any Person: Code 109.

Form of Charge.—That A.B., at , on , did, without lawful excuse, unlawfully point at C.D. a firearm or an air gun.

Punishment.-Fine, \$10 to \$100, or thirty days.

Carrying, or Having, or Selling Offensive Weapons: Code 110.

Form of Charge.—That A.B., at , on , did unlawfully carry about his person a bowie-knife, or dagger, or dirk, or metal knuckles, or skull cracker, or slung shot (or other offensive weapon of like character, stating what); or did unlawfully and secretly carry about his person an instrument loaded at the end; or did sell, or expose for sale, a bowie-knife (or any of the weapons above enumerated, naming it); or that A.B., etc., being then and there masked or disguised, did unlawfully, and while so masked or disguised, carry, or have in his possession, a firearm or air gun.

Punishment.—Fine, \$10 to \$50; imprisonment in default of payment, thirty days.

Carrying Sheath Knife: Code 111.

Form of Charge.—That A.B., at , on , was found in the town (or city) of carrying about his person a sheath knife, he, the said A.B., not being thereto required by his lawful trade or calling.

Punishment.—Fine, \$10 to \$40, imprisonment on default of payment, thirty days.

Tyibusal.—In cases under Code 107, 108, 109, 110, 111, two Justices, summarily.

Limitation.—One month: Code 551.

See also R.S.C. c. 50, as to North-West Territories; R.S.C. c. 149, s. 5; R.S.C. c. 151, ss. 3-12 (unrepealed: App. to Criminal Code).

In any of the above cases, on the person being convicted, the justice or justices are to impound the weapon; and, if a pistol, it is to be handed to the clerk of the county, or to the provincial authorities; if not a pistol, it is to be destroyed: R.S.C. c. 148, s. 7 (unrepealed: App. to Criminal Code).

Wilful (as regards injuries under Part 37) is defined by Code 481 to mean, causing an event by an act which the person knew would probably cause it, he being reckless whether such event happens or not.

This definition is in accordance with the common law principle, and will undoubtedly apply to the word "wilful" wherever it is used in any statute.

If the offender is the sole owner of a thing injured by him, his act is, notwithstanding, an offence, if it was done with intent to defraud: Code 841. So in a charge of arson, if the charge is for wilfully setting fire to, or injuring the offender's own property, it must be alleged and proved to have been done "with intent to defraud."

Wilful Injuries, Defined and Explained: Code 481.— See "Explosions," Fire.

Wilfully Destroying or Damaging any of the Properties mentioned in Code 499 (A).

Form of Charge. - That A.B., at and wilfully, and without legal justification or excuse, and without colour of right, destroy or damage certain property, to wit: (a) a dwelling-house then and there situated, and belonging to C.D.; or a ship or boat called (naming it), and belonging to C.D.; such destruction or damage, being caused by an explosion, and causing actual danger to the life of C.D. (or E.F., etc.), who was (or were) then in the said dwelling-house,

(c)* A certain bridge, or viaduct, or aqueduct (describing it) over or under which a highway or the railway or the canal then and there passed, which said destruction, or damage, was so done by the said A.B., and so as thereby to render the said bridge, or viaduct, or aqueduct, or the said railway, or highway, or canal so passing over or under the same as aforesaid (or a part, etc.), dangerous or impassable; or

* A railway known as the truction being done by the said A.B. as aforesaid with the intent thereby railway, the said damage or desto render the said reilway dangerous or impassable.

Punishment.—Imprisonment for life.

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Form of Charge. - (a) (Proceed as in above form to the *) a ship called (state the name), the property of C.D., and which was then and there in distress, or wrecked; or certain goods, or merchandize, or articles (naming them), which belonged to a ship called and there, or had theretofore been in distress or wrecked; or , which was then

(b) * Certain "cattle" (see definition in Code 3 (d)), to wit, a cow then belonging to C.D.; or the young of certain cattle, to wit, (a calf), then belonging to C.D., which said damage was so caused as aforesaid by killing, or maining, or poisoning, or wounding the said cow (or calf). Punishment. - Fourteen years.

Code 499 C. (a)* A ship called (name it), with intent thereby to destroy or to render useless the said ship.

⁽b) A mark or signal (describing it) then and there used for purposes of navigation.

- (c) Injury to a bank or dyke or harbor works, etc.
- (d) Injury to a navigable river or canal, etc.
- (e) Injury to the flood gate or sluice of a private water.
- (f)* A private fishery or salmon river belonging to C.D. and situated (describe it), which said damage was caused by the said A.B. by putting lime or a noxious material (describing what) into the water of the said private fishery with intent thereby to destroy fish then being in the said fishery, or which were then to be put into the said fishery.
- (g)* The flood gate of a certain mill pond or reservoir or pool (describing it), the property of C.D., which said damage was caused by the said A.B. by cutting through the said flood gate, or by destroying the said flood gate by (state the means used).
- (h)* Certain goods, to wit (state what), the property of C.D., which were then and there in process of manufacture in a certain (mill or factory, etc.,), such damage being then and there done by the said A.B. with intent thereby to render the said goods useless.
- (i)* A certain agricultural or manufacturing machine or manufacturing implement (stating what), the property of C.D., the said damage being then and there done by the said A.B. with intent thereby to render the said machine or implement useless.
- (j)* A hop bind then and there growing in a plantation of hops of C.D., situate (describe where), or a grapewine then growing in a vineyard of C.D., situate, etc.

Punishment. - Seven years.

Code D (a)* A tree, or shrub, or underwood, the property of C.D., and which was then growing in a certain park, or pleasure ground, or garden, or in a certain piece of land adjoining or belonging to the dwelling of the said C.D., situate (describe): the said tree (etc.), being thereby injured to an extent exceeding in value five dollars: (see also Code 508 infra; see also Code 907 as to statement of particulars of the offence.)

(b)* A post letter bag, or post letter, the property of the Postmaster General of Canada (see definition of "post letter bag" and "post letter:" Code 4).

(c)* A street letter box, or pillar box, or a certain receptacle (e.g., a letter box in the office of Hotel, in the of), then and there established by the authority of the Postmaster General of Canada for the deposit of letters or other mailable matter.

(d)* A certain parcel sent by parcel post, or a package of patterns, or samples of merchandise, or goods, or of seeds, or cuttings, or bulbs, or roots, or scions, or grafts, or a printed vote or proceeding, or a newspaper, or book, or mailable matter (describing it), sent by mail, and the property of the Postmaster General of Canada.

(e) " Certain real or personal property (describing it), belonging to (c) Certain real or personal property (nescribing 11), belonging to C.D., and which was then and there so damaged by the said A.B., by o'clock in the ensuing forenoon, and to the value of twenty dollars. ("Property" defined: Code 3 (v); "by might:" Code 3 (q).

Punishment .- Five years.

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Code 499 (a)* Certain real, or personal property (describing any other property than those above mentioned), of C.D., and which was then and there so damaged by the said A.B. by day to the value of twenty dollars.

Punishment .-- Two years.

(See also Code 511 infra).

Attempts to Injure or Poison Cattle: Code 500.

Form of Charge.—That A.B., on , at , did unlawfully and wilfully attempt to kill, or main, or wound, or poison, or injure certain eattle, or the young of certain cattle, to wit, (state what), the property of C.D.; or place polson in such a position as to be easily partaken of by certain cattle, etc. (describe where the noison was placed, and to with upon the great in a certain position was placed. Form of Charge.-That A.B., on e.g.) to wit, upon the grass in a certain pasture in which the said cattle then were feeding (or in salt placed in a field or lane where the said cattle then were for the purpose of the same being partaken of,

See " Animals," supra.

As to "Attempts," see supra Code 64; "Cattle," defined: Code 3 (d). See also amended Code 512 in the Act of 1895, also Code 512-514.

Punishment.-Two years.

Wilful Injuries to Animals other than "Cattle": Code 501.

Form of Charge. - That A.B., on and wilfully kill, or main, or wound, or poison, or injure a dog, or a beast or other animal (describe it), the property of C.D.

Tribunal. -Justice, summarily.

Limitation. - Six months: Code 841.

Punishment.-Fine, \$100 over and above the injury done; or three

Second Offence under Code 501 (2) is indictable, and liable before the sessions, or before a magistrate on consent.

Punishment.-Fine or imprisonment in the discretion of the Court. Imprisonment is to be not more than five years: Code 951.

The animal must be one which may be "the subject of larceny at common law" (as to which see Code 304), or must be such as are ordinarily kept in a state of confinement, or kept for any lawful purpose: Code 501.

Threats to Injure Cattle: Code 502.

Punishment, -Two years.

Poll-Books or Election Documents, Wilful Injuries to: Code 503.

Punishment .- Seven years.

See supra Election Documents.

Wilful Injuries to Buildings by Tenants or Mortgagors: Code 504.

See Tenants, supra Code 322, as to theft of fixtures by tenants.

Form of Charge.—That A.B., on , at , being then and there passessed of a certain dwelling-house (or other building, describing it), or a part of a certain dwelling-house, etc., which was then built on land, to wit, (describe the land), subject to a mortgage held thereon by C.D., or which land was then held for a term of , or at will, or held over after the term of a tenancy under a lease thereof to the said A.B. from C.D., did unlawfully and wilfully, without legal justification or excuse, without colour of right, and to the prejudice of the said C.D., *pull down or demolish (or begin to, etc.) the said dwelling.

*Remove (or begin to remove) the said dwelling house or building (or a part of, etc.) from the said land and premises o.: which it was so erected and built.

*Pull down or sever from the freehold of the said land a certain fixture, to wit (state what) then fixed in or to the said dwelling house or building (or the said part of, etc.)

Punishment.-Five years.

Land Marks, wilful injuries to: Code 505, 506.—See Land Marks, supra.

Fences, etc., wilful injuries to: Code 507.

Form of Charge.—That A.B., etc., did unlawfully and wilfully destroy or damage a certain fence, or a wall, or gate, or a post or stake then planted or set up on certain land or marsh, or swamp, or land covered by water on or as the boundary line of certain land (or, etc.), or in lieu of a fence to the said land (or, etc.) which land (etc.) was then the property of C.D., and situated (describe it).

Tribunal.-Justice summarily.

Limitation .- Six months: Code 841.

Punishment.-Fine \$20, over and above the injury.

A second offence is likewise triable summarily. Punishment. - Three months with hard labour.

Harbour Bars, etc.: Code 507A.—See Act of 1893, c. 32; R.S.C. c. 91, as amended by the Act of 1899, c. 31.

Tribunal .- Justice summarily.

Limitation. -Six months: Code 841.

Punishment. - Fine \$50.

Trees, etc., wherever growing: Code 508.—See Code 499D. (a) supra, and Code 907.

Tribunal.-Justice summarily.

Limitation. - Si. nonths: Code 841. Second offence (summary conviction), fine \$50: Code 508 (2): Third offence (indictable), two years: Code

Vegetable Productions, in gardens, etc.: Code 509.

Form of Charge. - That A.B., etc., did unlawfully and wilfully and without legal justification or excuse, and without colour of right, destroy or damage with intent thereby to destroy, a certain vegetable production, to wit (state what), the property of C.D., and which was then growing in a certain garden or orchard or nursery ground, or house or hot-house, or green house or conservatory of the said C.D., situate (describe the place).

Limitation .- Six months: Code 841.

Punishment.—Fine \$20, over and above the injury. Second offence (indictable), two years: See Code 478.

Cultivated Root or Plant elsewhere than in a garden, etc.: Code 510.

Tribunal .- Justice, summarily.

Limitation. -Six months.

Punishment.—Fine \$5 over and above the injury.

Second Offence (summary conviction), three months imprisonment.

See Code 478,

Wilful Injuries, Not Otherwise Provided For: Code 511.

Form of Charge.—That A.B., etc., did unlawfully and wilfully commit damage, or injury, or spoil, to or upon certain real or personal property, to wit, (state what), belonging to C.D.

Limitation. -Six months.

Punishment. -\$20, and also such further sum as appears reasonable compensation, not exceeding #20, which latter amount is to be paid to the person aggrieved in the case of injury to private property. In default of payment, two months.

Fair and Reasonable supposition of right ousts the jurisdiction: ('ode 511 (2a).—See supra "Claim of Right."

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lestroy e then overed in lieu en the Trespass (not being wilful and malicious), while hunting, or fishing, or pursuing game, is not an offence: Code 511 (2b).

Under Code 861 a justice or magistrate may discharge a person summarily convicted before him on a charge of wilful damage, if it is a first conviction, upon the offender making compensation, to be fixed by the justice or magistrate.

Wilful Damage by Explosives: Code 488.—See Explosions.

Wilful Damage in Respect to Railways: Code 489-491
—The Railway Act of 1888, c. 29, amended by the Act of 1899, c. 37.

Damage to Telegraphs: Code 492.

Wilful Damage by Wrecking: Code 49.3.—See Wrecking.

Wilful Damage or Interference with Marine Signals, etc.: Code 495.—See Signals.

Wilfully Preventing the Saving of Wreck: Code 596.—See Wreck.

Rafts, wilful injuries to: Code 597.

Dame, Piere, Slides, Booms, etc.: Code 597.

Mines: Code 598.

Oil Wells: Code 598.

Tribunal.—In all cases of wilful damage above stated, except where it is specially mentioned that they may be tried summarily, the offences are indictable, and may be tried at the Sessions, or by a Magistrate on consent.

Limitation.-None.

Witchcraft, Fortune Telling, etc., Pretending to Practice: Code 396.

Imp. Stat. 9 Geo. II., c. 5, is also in force here.

Form of Charge.—That A.B., at , on , did unlawfully * pretend to exercise or use certain witchcraft, or sorcery, or conjuration, or enchantment.

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^{*} Undertake to tell fortunes.

^{*}Pretend from his pretended skill in an occult or crafty science, to wit (describe), to discover where or in what manner certain goods or chattels, to wit (state what) supposed to have been stolen, or lost, might be found.

It is not necessary to allege or prove that the act was done with intent to deceive or defraud, or that it actually did so: Penny v. Hanson, 18 Q.B.D. 478; R. v. Milford, 20 O.R.

Punishment.-One year.

Tribunal.—Bessions. Magistrate on consent.

Limitation.-None.

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Workmen, Criminal breaches of contract by: Code 521, 522.

Workmen and others, intimidation with respect to: Code 523-526.

Code 523. Form of Charge. - That A.B., at wrongfully and without lawful authority, with a view to compel C.D. to abstain from employing E.F. as a workman, whom he the said A.B. had a lawful right to so employ: or to compel C.D. to employ abstain from so employing; or to compel the lawful right to so employ abstain from so employing; or to compel the said C.D. to increase or to compel the said C.D. to compel the said C. abstain from diminishing the rate of wages of his workmen; or to compel J.K. to abstain from working for C.D.; did unlawfully " use violence to the said C.D. (or the said J.K.), or to the wife, or children of the said C.D. (or J.K.) or sinjure the property of the said C.D. or J.K. (set out the acts of violence, or the injury done.)

Intimidate the said C.D. (or J.K.) by threats to (proceed as in the preceding form.)

* Persistently follow the said C.D. (or J.K.) from place to place.

"Hide certain tools then owned or used by the said C.D. (or J.K.), or deprive the said C.D. (or J.K.), or hinder the said C.D. (or J.K.) in

"With one (or more) other persons follow the said C.D. (or J.K.) in a disorderly manner in a street in

*Beset or watch the house in which the said C.D. (or J.K.) resided, or the mill or factory (or other place) where the said C.D. (or J.K.) then worked or carried on business, or happened to be.

Tribunal.—Two justices or a magistrate, summarily.

Limitation .- 6 months: Code 841.

Punishment. - Fine \$100 or three months.

Unlawful combinations and using violence to prevent persons working: Code 524. Punishment .- Two years.

Using Violence or Threats to intimidate dealers in produce or goods, or persons conveying produce to market,

etc., or sailors, stevedores or others from working on a vessel : $Code \ 525$.

Punishment.-\$100 or three months.

Tribunci.—Sessions or magistrate on consent on indictment, or two justices or a magistrate, summarily.

Limitation.—To prosecutions by indictment, none; to prosecutions before justices or magistrate, six months: Code 841.

Intimidating Bidders at sales of public lands: Code 526.

Tribunal.—Under Code 524 or 526. Sessions. Magistrate on consent.

Limitation.—None.

Wounding, or inflicting grievous bodily harm: Code 242.

Form of Charge.—That A.B., etc., did unlawfully wound, or inflict grievous bodily harm upon C.D.

Punishment.-Three years.

Tribunal.-Sessions. Magistrate on consent.

Limitation .- None.

Wounding, with intent to murder: Code 232 (b).—See Murder.

Wounding, with intent to maim, distigure, etc.: Code 241.

Form of Charge.—That A.B., etc., with intent to maim, or to disfigure, or to disable, or to do grievous bodily harm to C.D., or with intent to resist or prevent the lawful apprehension or lawful detainer of the said A.B. (or of E.F.), did unlawfully wound, or cause grievous bodily harm to C.D. (or to G.H.): or did unlawfully shoot with a loaded pistol or gun at C.D., or attempt by drawing a trigge. (or in any other manner, stating how), to discharge a loaded arm, to wit, a pistol or a gun, at C.D. (or G.H.).

Punishment.-Imprisonment for life.

Tribunal.-Sessions. Magistrate on consent.

Limitation .- None.

Wounding a Public Officer while on Duty: Code 243 (b).

"Public Officer" Defined: Code 3 (w).

See Assaulting Public or Peace Officer, or any one aiding such officer: Code 263.

Form of Charge.—That A.B., etc., did unlawfully main, or wound, C.D., who was then and there a public of or, to wit, an Inspector of the Inland Revenue of the Dominion of Canada (or as the case may be), he, the said C.D., being then and there engaged in the execution of his duty as such officer; or did unlawfully wound E.F., a person acting in aid of a public officer (conclude as in the preceding form).

Punishment. - Fourteen years.

See also Explosions; Drugging; Administering Drugs.

Shooting at any Vessel belonging to His Majesty, or in the service of Canada: Code 241 (a).

Punishment, -- Fourteen years. Tribunal. Sessions. Magistrate on consent. Limitation .- None.

Wreck, Defined: Code 3 (dd).

Steuling Wreck: Code 350 .- See Theft.

Selling Wreck without Title: Code .380.

Tribunal.—Sessions. Magistrate on consent.

Limitation .- None.

Punishment, -- Seven years.

Secreting, defacing marks on, concealing, receiving, dealing with, keeping in possession or detaining wreck or wreckage, or boarding a vessel wrecked, stranded or in distress against the will of the master, unless by command of the official receiver of wrecks: Code 381.

Tribunal.—On indictment, Sessions. Magistrate on consent; may also be tried summarily before two Justices. Limitation .- On indictment, none; before Justices, six months:

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Punishment.—On indictment, Two years. On summary conviction, fine. \$400; or six months.

Wrecking or Attempting to Wreck a Ship Wilfully: Code 493, 494.

Tribunal.—Sessions. Magistrate on consent.

Limitation. - None.

Punishment. - Imprisonment for life.

Wilfully Preventing or impeding the saving of a vessel wrecked, stranded, abandoned or in distress; or endeavouring

Tribunal, -Sessions. Magistrate on consent.

Limitation. - None.

Punishment. -- Seven years.

Wilfully Preventing or impeding the saving of a wrecked vessel or wreckage; or endeavouring to do so: Code 496.

Tribungi.—On indictment, Sessions. Magistrate on consent. On summary conviction, two Justices.

Limitation. -On indictment, none; before Justices, six months.

Punishment.—On indictment, seven years; before Justices, fine \$400, or six months.

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Preventing or Impeding saving life of "ship-wrecked person": Code 254.

Definition: Code 3 (x).

Punishment, - Seven years.

Tribunal.—Sensions. Magistrate on consent.

Limitation .- None.

Note.—In all cases except those in which justices are expressly given summary jurisdiction, a justice is to hold a preliminary enquiry only, proceeding as described in the chapter on preliminary enquiries supra; but if the case is one which is not within the exclusive jurisdiction of a Superior Court, and is therefore within the jurisdiction of the Sessions, a magistrate may try the case summarily under Part 55, if the accused consents. In the absence of such consent a preliminary enquiry only is to be held by the magistrate, or may be held by a justice.

As to the requisites of forms of charges, see Code 608-628;

and as to second offences, see Code 628.

Costs may be awarded on conviction by justices: Code 867; or magistrates: Code 832, amended in 1900; and hard labour may be awarded on imprisonment where it is so provided, and in such case hard labour may be awarded on commitment on default of payment of a fine, even if it is not so expressly provided by the section relating to the offence: amendment of Code 872 in the Act of 1900.

By Code 958 in the Act of 1900 a magistrate may in lieu or addition to imprisonment award a fine; and additional imprisonment on default of payment.

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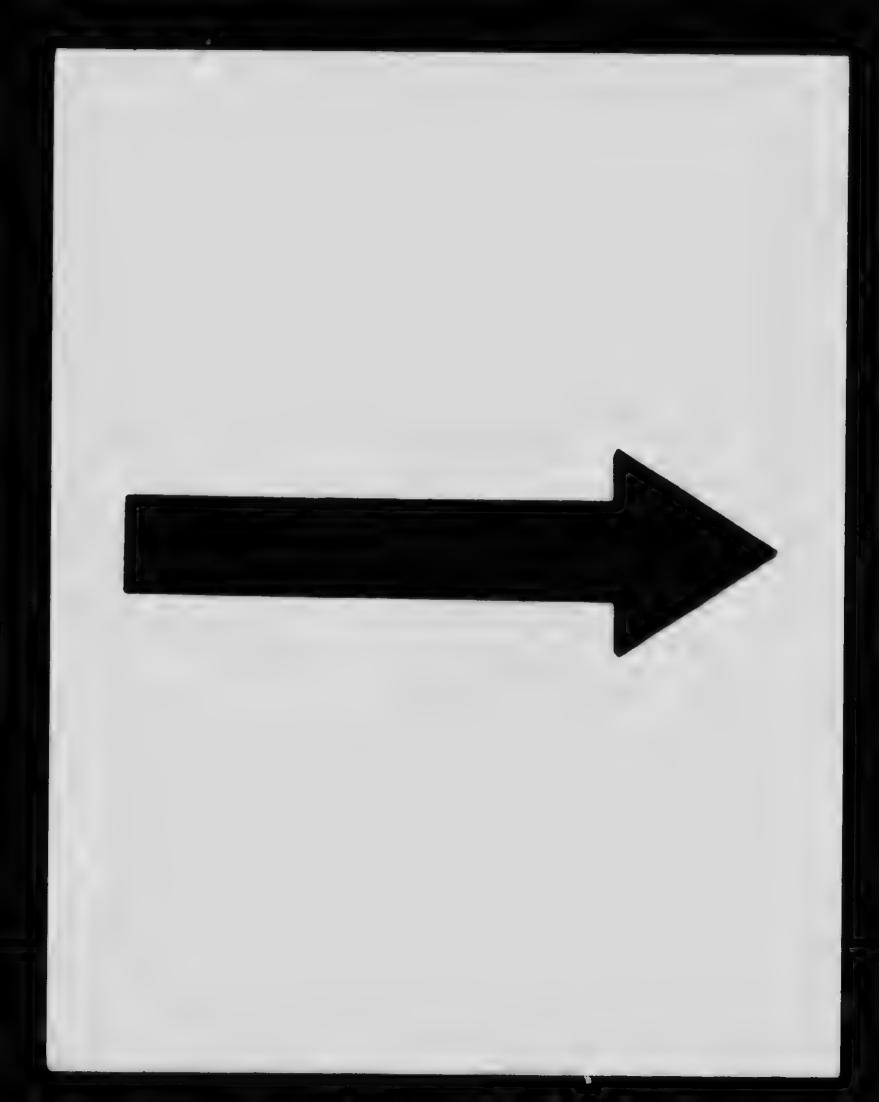
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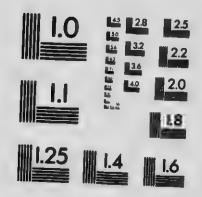
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